

**FEDERAL COMMUNICATIONS COMMISSION  
REFORM FOR THE NEW MILLENNIUM**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON TELECOMMUNICATIONS,  
TRADE, AND CONSUMER PROTECTION  
OF THE  
COMMITTEE ON COMMERCE  
HOUSE OF REPRESENTATIVES

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## FEDERAL COMMUNICATIONS COMMISSION REFORM FOR THE NEW MILLENNIUM

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TUESDAY, OCTOBER 26, 1999

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON COMMERCE,  
SUBCOMMITTEE ON TELECOMMUNICATIONS,  
TRADE, AND CONSUMER PROTECTION,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:36 a.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Gillmor, Cox, Cubin, Shimkus, Pickering, Fossella, Ehrlich, Bliley (ex officio), Markey, Eshoo, Engel, Luther, Sawyer, Green, McCarthy, and Dingell (ex officio).

Staff present: Justin Lilly, majority counsel; Cliff Riccio, legislative clerk; and Andy Levin, minority counsel.

Mr. TAUZIN. The committee will please come to order.

Good morning and welcome to the third hearing on FCC reform. Today we will hear from the FCC Commission regarding their views on the proposed FCC reforms put forth by this Commission and its strategic plan: a new FCC for the 21st century.

I want to welcome Chairman Kennard and all the Commissioners and express my appreciation on behalf of the committee for your attention to this issue and for your presence here today. As usual, we deeply appreciate the dialog that we are beginning to have on this very important subject.

When Congress passed the historic, much-publicized Telecommunications Act of 1996, I believe as I have often said in public, that we made a fundamental mistake. We failed to reform the outdated structure and the outdated mission of the FCC when we overhauled the law. As a result, as America prepares to enter the 21st century, I believe we have in effect a horse-and-buggy agency trying to bridle a supersonic technology, and it is simply not working as well as it could and should.

These words, I am sure, are not unfamiliar to you. I have used them many times. But I am using them over and over in the hopes that they will ring clear in the minds of those with the authority to really effect change.

In an attempt to further the reform of this agency, I recently appointed an FCC task force headed by my good friend, Paul Gillmor. As a result of his efforts and the efforts of the task force membership, I was presented this voluminous binder of recommendations. It is getting thicker and thicker. And I want to indicate how

pleased I am that, in fact, they have taken this work so seriously and are devoting so many hours to it.

As I promised members of the minority, this task force would be bipartisan. I again ask today that Mr. Dingell consider the appointment of several members from the minority to join with my Republican colleagues in that task force effort so that we might continue this process as we continue to call for efforts to craft comprehensive reform that is as much as possible not only bipartisan but hopefully nonpolitical.

Let me say from the outset that I am pleased with the work of the task force, and I agree with many of the proposals set forth in the document. Let me also add parenthetically, one of the things I am very disappointed with is the willingness of the regulated community to come forward and speak to us about problems they experienced with the agency. They tell us many things privately, but won't go on record. That itself is ringing testimony that there is something wrong with the process where those who are most affected by it are unprepared or unwilling to go public with their criticisms.

Where I and many of my colleagues as well as many in the industry agree with the efforts being made by the Commission to examine reform itself, let me indicate at the outset that many of us disagree on the timing of the proposed reforms by the Commission. Five years is simply twice as long as we believe is necessary, and this committee is going to be relentless in seeing that the FCC reforms are completed to a significant degree over the next 2½ years.

Five years, Mr. Chairman. Currently 86 percent of the Internet delivery capacity in the United States is concentrated in the 20 largest cities in America. Five years, when analysts are projecting that within the next 3 years there will be a 1200 percent increase in business-to-business Internet services, generating \$1.5 trillion in revenues. Five years, when 210 of the country's 346 metropolitan statistical areas, roughly 61 percent, do not have direct on-ramps to the Internet. There are only 98 hubs serving towns in non-metropolitan service areas in this country. California alone has 177 hubs. That is more than the combined total of 31 States.

Five years. There are 80 bills pending in Congress seeking to apply various regulatory or deregulatory provisions to commerce over and content on or access to the Internet or telecommunications in general. Five years is simply too long, especially in a world of this fast-changing technology. We need simply to catch up by creating changes in the processes here in Washington that make sense in a modern deregulated environment. The time for that is now.

Again, let me thank Mr. Gillmor and the members of his task force for all of their hard work. I want to thank the minority in advance for their interest and hopefully their commitment to become part of this task force. And to members of the Commission, I want to again thank you not only for appearing today but for, as I said, taking this seriously and dialoguing with us today on what it takes to get this really moving and how long it will take to complete it.

Again, let me thank you for your attendance, and the Chair will now yield to the gentlelady from California, Ms. Eshoo, for an opening statement.

Ms. ESHOO. You caught me with coffee and a bagel, Mr. Chairman. Thank you very much.

Mr. TAUZIN. You have 5 years to take care of that.

Ms. ESHOO. Good morning to you, Mr. Chairman, and thank you for calling this important hearing. It is always a pleasure to see the Chairman of the FCC, the distinguished Chairman Mr. Kennard, and each of the Commissioners, and I want to welcome you here today.

First, let me just say that 7 months ago when you were last before this subcommittee, I brought up the need for further action on E. 911. Today I want to thank you publicly, each of you, for heeding my call and that of many others to revise the FCC's rules on this very important issue. I believe the ruling that the FCC issued in September will provide consumers with enhanced 911 emergency services that will promote the public's safety and competition among wireless 911 equipment manufacturers as well as the continued improvement in the quality of 911 service. I commend each one of you for this ruling, which I believe will in the end help to save countless lives in our Nation. That isn't any small contribution, and I am very, very sincere in saluting you for what you have done.

Chairman Kennard has nicknamed the FCC reform plan The New FCC: fast, flat, and functional. I am pleased that part of this plan calls for the FCC to be looking to invest in new technologies to create a paperless FCC so that applications and licenses can be processed more efficiently. I think the agency has an opportunity to be a leader in the Federal Government in this respect, and I think it can start by becoming the first agency to accept and utilize the electronic signatures on letters of agency and other documents. I also think the FCC has the opportunity to take a big step in facilitating competition in the building access issue. And I think the FCC does have the authority to make a ruling on this issue.

In this unprecedented period of increasing competition in the telecommunications industry, it would be unfortunate if residential and commercial building tenants were not given the opportunity to choose between carriers. I think that this is one of the manifestations of the Telecom Act, and I look forward to it being implemented. The FCC should use its authority to offer a fair and reasonable resolution that ensures that tenants have access to the local competitors of their choice. There is room for improvement on the length of time the FCC has taken to review mergers, and I am pleased the agency is in the process of creating an interagency merger team to streamline and accelerate the merger review process.

So again, Chairman Tauzin, I would like to thank you for calling this hearing. I look forward to hearing more about the FCC's reform plan this morning. And again, I welcome you here. It is always good to see you, important to work together. I can't think of a more powerful agency in the life of America today, and we have to work every day to make sure the meaning of that power is felt by each and every American citizen in our country. After all, it is the telecommunications.

Thank you, and I yield back.

Mr. TAUZIN. I thank the gentlelady. The Chair wishes to point out—I hope the Commission understands that the paucity of members here is not a reflection on either—any disrespect of your presence on the issue. We have got a conference going on of Republican members. I know there is an O&I hearing that is drawing some of our members away. They are coming.

So let me now recognize the gentleman from California, Mr. Cox, for an opening statement.

Mr. COX. Thank you, Mr. Chairman. I want to thank the Commissioners for being here and explain my immediate absence. We have an O&I hearing exactly on top of this, which sometimes happens. I have read all the written testimony that has been submitted and I thank you for providing it and we will be most interested in reading the proceedings that I am going to miss.

I don't think there is a more important issue before each of you and before us as a Congress in our oversight capacity than what the FCC looks like in the future. And I have to say that I think Chairman Kennard has laid out in general terms pretty much where we are headed and what the challenge is.

The objects of regulation are changing so rapidly that if the FCC were not to rethink from the bottom up its entire reason for existence, we would be overtaken by events. I also think that we need to notice the difference between promoting markets through regulation and promoting markets. Sometimes we think by adopting a better, different or wiser regulation, we can get more competition, whereas in fact we simply end up creating another regulation.

The E-rate program, which may or may not come up in members' questioning here, continues to trouble me because it is emblematic of the problems we have had in oversight of the FCC. Congress passed a law in 1996 and the FCC in many respects, at least in the view of many of the members of this committee, is doing something other than what the law intended. The E-rate program, which has been much litigated, represents probably the logical limit to which law by regulation can be pushed. There wasn't a provision for these particulars in the 1996 act, and we have ended up imposing a tax which, however it might be justified and however it might be litigated, represents an enormous lapse in good judgment, it seems to me, in the appropriate roles of the branches; it would seem it would be for Congress to pass the taxes and to do so with a different kind of popular input than the FCC can take advantage of, and for the FCC not to do those things.

It is for that reason that we had a bipartisan letter signed by the chairman and ranking Democrats in both the House and in the Senate, with some rather strong words, I would think, for bipartisan correspondence and for that genre, suggesting that the age of kings passed with the American Revolution, for example, and that we ought to impose taxes in this fashion.

It has been called the Gore tax because of the Vice President's support for it, but making it the focus of next year's election is not anybody's idea of a good time. I would rather get rid of this tax now and, more to the point, get rid of the regulatory climate that permits the FCC to, I think, invade the legislative turf in that fashion.

We ought to be thinking about ways to shrink regulation and shrink the FCC itself, not create new fiefdoms and enormous new jurisdictions with several sustaining their own non-legislative taxes.

I thank the chairman for the time. I apologize for my absence but I am enormously interested in this subject and will pay very close attention to what you say, even when I am not physically present here. Thanks.

Mr. TAUZIN. Thank you, Mr. Cox. The gentleman from Texas, Mr. Green, is recognized.

Mr. GREEN. Thank you, Mr. Chairman. Like my colleague from California, we have a vote, I am told, at 10 o'clock upstairs, on the Department of Energy, and I too will be leaving shortly. Let me just follow up on my colleague from California on the E-rate, support of the E-rate, and realizing it was in the 1996 act. And in fact our Chairman has a bill, and I think originally Congressman Klink had one that would replace the E-rate with an actual tax, and I think that is a good mechanism. That is a tax cut on our side of the aisle, Mr. Chairman, we could probably support as long as it would be devoted to the E-rate and the success we have seen with E-rate funding in my own district, at least across the State of Texas.

We also might want to look at the universal service charge, because I have found a lot of constituents are just upset because of all the charges on their bill that are broken out now that used to not be broken out.

I want to thank you for calling the hearing, Mr. Chairman, on the FCC and the New Millennium and its growing digital age. It is nearly impossible for regulatory agencies and legislators to keep up with the explosive growth with the telecom industry. For example, the Internet has successfully cut across all traditional communications boundaries so that a person over the Internet can make a long distance call or listen to the ball game or watch television programming. It is really exciting.

In March of this year, Chairman Kennard came to us and laid out a vision of the FCC. It was enlightening to hear that the FCC was going to try to keep up with the times and restructure the Commission to meet with these demands, while sustaining the main charge of promoting competition and communications, protecting consumers and supporting access to all Americans to the existing advanced telecommunications.

Like the Chairman, I encourage you to act as expeditiously as possible on the reforms because the technology changes are so rapid.

Let me point out the need for resources—and I was noticing in our booklet today, Mr. Chairman, the 1996 act that was passed, that year the FCC requested \$223.6 million, we appropriated \$185.7 million in each year for the next up until 2000, when the FCC requested \$230.9 million and we appropriated \$2.210 million. Each year it has been anywhere from \$10 to \$20 million less in appropriations than what the FCC requested. Not that we need to exactly match the dollar, but if you give someone a responsibility to do a job, then you also need to give them the resources to do it.



I know that is not our committee but we may want to point that out to our folks over at the Appropriations Committee.

I appreciate the opportunity to discuss with the Commissioners on many issues that are before the FCC. And I, coming from Texas, I am glad the SBC and the Ameritech issue has been settled and that is moving along, because I know as soon as that was done, there is another giant merger that you have to consider. That is, I guess, the nature of the competitive system we have today.

I do have a particular situation. We have an application from some folks in Houston for a Spanish-language TV station in the Blanco, Texas area, north of San Antonio and west of Austin. It seems like it has gotten caught up in bureaucratic problems over the FCC. We sent letters, the Texas delegation has. And if you could look at that, there was a competing ownership and there is one of the people that applied for it had some, I think, ethical problems in what they were doing; but people who actually are looking for the station have been caught up in that problem, but they are—with their competitors—and I would hope that under our, Mr. Chairman, under our FCC reform bill, even though we want to auction off the spectrum if there is no availability of bidders on certain areas, then we set some type of minimum amount or some type of amount that will raise money but also provide for the FCC, where we can have in some rural areas these opportunities for alternatives other than English-language broadcasting.

With that, Mr. Chairman, again thank you for calling this hearing.

Mr. TAUZIN. I thank the gentleman from Texas.

The chairman of the FCC Reform Task Force, vice chairman of our committee, Mr. Gillmor, is recognized.

Mr. GILLMOR. Thank you very much, Mr. Chairman. I appreciate your holding this hearing. I want to thank the five Commissioners for taking the time and coming up and visiting with us. I look forward to your testimony.

Mr. Chairman, last spring you asked me to serve as the head of the informal task force, Commerce Committee members, to look at developing a consensus about issues affecting the reauthorization of the FCC. I want to commend your leadership in trying to resolve that issue. In the ensuing weeks the task force had a number of meetings and discussions with FCC employees. We also polled numerous industry groups for their recommendations, and I think we have received some remarkably useful feedback. We now have a solid body of knowledge on which to build in the future.

I also support the notion that the task force should now seek out additional information from the FCC itself, and I would welcome the establishment of a working group between the FCC and our committee so that the common areas of agreement can be established.

I also endorse reaching out on both sides of the aisle in our committee, and I would look forward to recommendations in that respect as well.

To an outsider, reauthorization of a government agency with five Commissioners and some 2,000 employees would seem like a relatively simple endeavor. But on the contrary, I think this is one of the greatest challenges we have. The number of legal, of regu-

latory, of personnel, organizational and telecommunications issues are staggering, very complex, and they often do not lend themselves to easy solutions.

We are going to no doubt hear much talk in this hearing about streamlined bureaucracy, about increased competition, about less regulation. And I think that the vast majority of us agree with those goals. And the devil lies in the details, and that is why we are here today. A change in technology very frequently bypasses a regulatory structure that we set up. The regulatory structure that we set up, for example, in the financial services area, where we have just completed work in conference committee, has resulted in a major recommendation where we are just trying to meet the changes regulatorily that have taken place in the marketplace. And we have the same thing in telecommunications. And what we are trying to do here is to change our regulatory structure in a way that it meets what is happening in the marketplace.

So I wanted to again thank the Commissioners for being here and I yield back the balance of my time.

Mr. TAUZIN. I thank the gentleman. The Chair is now pleased to recognize the ranking minority member of our committee, still licking his wounds from that awful beating the Yankees put on his favorite team, my friend, Mr. Markey.

Mr. MARKEY. Good morning. I want to thank Chairman Tauzin for calling this hearing today on proposals to reform the Federal Communications Commission. And I would like to thank Chairman Kennard as well as Commissioners Ness and Powell and Furchtgott-Roth and Tristani for being with us here this morning.

The purpose of the hearing is to explore proposals to reform the Commission. I believe that constructive proposals to help the Commission do its job better and more efficiently are always welcome. I want to commend Chairman Kennard and the other Commissioners for the work they have already done to reinvent the Commission so that it functions in a confident and productive way.

Before we launch into a discussion about the job the Commission does and any proposals to help the Commission perform its task better, I think it is important to remember that the Commission has been entrusted with implementing the Telecommunications Act, a job that is unparalleled in scope and detail, since the enactment of the 1934 act itself. We must also remain cognizant that Americans today have the finest telecommunications system in the world. It is overall the most competitive, the most diverse, the most innovative telecommunications marketplace on the planet.

The fact that this is the case is due in no small measure to the fine work that the agency and its staff performs. As I stated in our previous hearings on FCC reform, I believe that radical restructuring of the Commission itself at this time would be counterproductive. The last thing we should do right now is reverse the course of battling to demonopolize telecommunications markets and jeopardize or delay deregulation. After all, we are not going to be able to deregulate until we demonopolize.

To break up monopoly barriers to competition, the Commission will need tools and resources; and competitors, both large and small, will need certain commonsense, consensus approaches to reform. The FCC are welcome, as they are in any government agen-

cy. I look forward to working with Chairman Tauzin in exploring how we can make progress together. And I thank you for holding this hearing, Mr. Chairman. I look forward to the testimony.

Mr. TAUZIN. I thank my friend. The Chair is now pleased to welcome the Chair of the full Commerce Committee, the gentleman from Richmond, Virginia, Mr. Bliley.

Chairman BLILEY. Thank you, Mr. Chairman. Today the subcommittee resumes its review of proposals to reform the Federal Communications Commission. I look forward to this discussion as it continues with its implementation of the 1996 act.

The FCC has been assigned substantial responsibility for ensuring that consumers enjoy the fruits of competition, but with that added responsibility comes an obligation to ensure that the public has confidence in the FCC's decisionmaking; more specifically, whether the FCC is engaged in open and transparent deliberations.

The FCC is an agency of five unelected officials who, in theory at least, are independent of the political branches of government. Some have gone so far as to suggest that the FCC is even unaccountable to the will of the American people. It is therefore critical that this committee conduct vigorous and exacting oversight of the FCC. That is why this committee has pending inquiries into a number of recent key decisions made by the FCC. The FCC is vested with serious responsibilities in this area of competition, deregulation, and consolidation. But I intend to ensure that the FCC remains accountable to this committee.

Let me also take this opportunity to raise my concerns with the recent ruling by the FCC on subsidies distributed pursuant to the Universal Service Fund. I noticed that on Thursday of last week, the Commission took action to actually double the amount of subsidies for the largest telephone companies like the Bell companies and GTE. This action raises a number of critical questions: Why are subsidies for these large incumbents increasing when they should be withering away as competition develops? By how much will consumers' bills increase to pay for these carriers subsidies? If the American people are being asked to carry subsidies, how can they be assured that they, and not the large carriers, will benefit from them?

These are important questions to which I hope the subcommittee receives answers today. These subsidies are increasingly difficult to justify as we transition to a competitive market. The FCC has a heavy burden of proof when it takes action to actually expand this subsidy program. Moreover, consumers should know and understand the extent of subsidies that are embedded in their monthly phone bills. I have been in politics a long time, both as a mayor, and now as a Member of Congress. And my experience has taught me that politicians and regulators increasingly look to telephone services as a source of tax revenue. Whatever one thinks about telephone taxes and carrier subsidies, we owe it to the American taxpayers to inform them about these taxes and subsidies.

That is why I, along with Chairman Tauzin, have introduced H.R. 3011, the Truth in Telephone Billing Act of 1999. This bill would require carriers to inform consumers about each and every telephone tax, regardless of whether the tax is a flat fee or assessed on a permanent basis.

I urge my colleagues to join us in cosponsoring H.R. 3011. Thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. TAUZIN. The Chair thanks the chairman of the committee and yields to the gentleman from Minnesota, Mr. Luther for an opening statement.

Mr. LUTHER. No, thank you.

Mr. TAUZIN. The gentleman from Ohio, Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman. Personally I am grateful to you and the leadership of this subcommittee for having this hearing today. I am particularly glad to see Chairman Kennard and his colleagues taking serious steps in developing a reform proposal that will put the Commission into its own digital age and making it easier for businesses and consumers to deal with the Commission. The efforts to promote competition in all markets by eliminating barriers to entry into domestic and international markets is important, as is the enforcement of rules and regulations. I am convinced consumers can benefit from this if done properly. I am also glad to see the Commission has given serious consideration to consumers by setting up a Consumer Information Bureau and a Consumer Advisory Board.

The work that you envision in the reform that you bring before us is important. I have to tell you that this last week has been frustrating for me. I keep getting dunned over my cell phone by my provider for services for which I have not yet been billed, and when I called them back to try and straighten it out I got put on hold literally for an hour. It was wonderful. I put it on hold and the music really filled the office with a lot of joy, but it was an expensive way, I suspect, to provide that kind of service. As my colleague from California says it is a telephone, not a radio.

In any event, I think there is much that can be done to benefit consumers. This committee has discussed the issue of modernizing the FCC for some time. I think probably in many ways it has been a good thing that the 1996 act has had the opportunity to play itself out in the real world and we can get some practical experience with the way it is working and then begin to address the kinds of matters that you bring before us today. In that regard, let me simply say again in closing, thank you to the chairman and to our ranking member and to our witnesses today.

Mr. TAUZIN. I thank the gentleman.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. MICHAEL G. OXLEY, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF OHIO

Mr. Chairman, thank you for calling this morning's hearing.

I want to welcome the commissioners and commend them for their testimony. I also want to commend the Commission for the effort put into internal reform of the FCC since we last met on this subject in March of this year.

At the March hearing I said that I believed that FCC reform was one of the most important telecommunications issues before the Committee and that I believed comprehensive reform was possible this Congress. While I still believe reform is important, the passage of seven months has not enhanced the viability of the effort.

That is not to suggest that there hasn't been some good work done in the interim. Congressman Gillmor's task force developed a range of excellent proposals for restructuring and refocusing the Commission, including many proposals on which I believe the Committee could find consensus if it set itself to the task. But if we are going to take a serious run at even a consensus reform effort, we had better get

started. The recommendations of the task force and the commissioners would be an excellent place to start.

Reorganization of the FCC is an opportunity to make it more efficient and improve its ability to fulfill its mission. We need to repeal obsolete statutes, eliminate outdated regulations, and otherwise clear out the underbrush in the law.

If FCC modernization is to be an attainable goal this Congress or even in the next Congress, we must stay focused on restructuring and not get sidetracked in old fights over telecommunications policy. There is no surer way to kill reform than to reopen those disputes.

We need to stay focused on the regulatory framework of the Commission itself. If we can do that, we can remake the Commission into a model of what an independent agency ought to be, with long-term benefits for all telecommunications sectors and all telecommunications consumers.

Mr. Chairman, I also want to take a moment to praise the Commission for its hard work on CALEA, the digital wiretap legislation. My thanks to each of the commissioners on behalf of the men and women of law enforcement. The order demonstrated great fairness and an appreciation of the requirements of public safety, in my opinion, and I hope that the Commission will dedicate itself to its timely implementation.

Finally, Mr. Chairman, I'd like to highlight a few especially noteworthy items from the testimony I reviewed. I believe Commissioner Powell makes very important points with respect to the relationship between competition and deregulation, and the need to presumptively favor deregulation. I also found his thoughts on curtailing duplication with other government agencies insightful. Any reform effort ought to begin there.

Commissioner Ness's emphasis on enhancing the Commission's technical resources, especially as they pertain to international representation, is well taken. Such wise investments are sure to benefit U.S. consumers and workers in the long run.

Finally, I always appreciate Commissioner Furchtgott-Roth's admonition that the Commission stick to implementing the law as written. I never get tired of hearing it, even if some of the other commissioners do.

Thank you again, Mr. Chairman. I yield back.

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PREPARED STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF FLORIDA

Mr. Chairman: Thank you for holding this hearing on the Federal Communications Commission's reform proposal.

I also would like to thank Congressman Gillmor, chairman of task force responsible for undertaking the daunting task of reforming the FCC for the work he has done.

Since the FCC was last reauthorized in 1991, I find this hearing to be much needed and timely, particularly during an era in which segments in the telecommunications sector often change in the blink of an eye. As Commissioner Powell put it, Commissioners "have to read the paper every day to know what we all will be doing in the next 24 hours."

I would also like to thank Chairman Kennard, Commissioners Ness, Powell, Furchtgott-Roth, and Tristani for appearing before the subcommittee today.

Mr. Chairman, the FCC has started the journey down the long road of reform. My concern is that it takes the off-ramp before reaching its final destination.

The commission has taken some little steps in the right direction toward reform. Last August, the FCC adopted several provisions from my legislation removing onerous restricts on broadcasters. The commission relaxed its local TV and radio ownership rules, its attribution rules, and national TV cap calculations.

However, it continues to hold on to vestiges of protective-regulation from a time passed, by not increasing the broadcast ownership cap, or allowing for cross-ownership by broadcasters and cable and newspapers.

I have read Chairman Kennard's "strategic plan" for reorganizing the FCC for the 21st century. The Chairman's own proposal is indication of much needed reforms. The question remains, can the FCC be left to manage its changes by itself.

I am left to answer no. The results of the FCC's attempt at streamlining and competition are less than deregulatory. Just look at how it has initiated its 1998 biennial regulatory review as mandated by congress in the Telecommunications Act of 1996.

Section 11 of the Communications Act requires the commission to review all of its regulations to determine whether the regulations are necessary, and whether

such regulations should be repealed or modified in the public interest as a result of meaningful economic competition. To date, the FCC has undertaken less than 35 proceedings as part of its biennial regulatory review.

For example, though the commission relaxed its television duopoly and one-to-a-market rules, it failed to repeal or deregulate its daily newspaper/radio cross-ownership rule, which generally prohibits the common ownership of a daily newspaper and radio station in the same community. The FCC decided not to consider newspapers as a voice in its duopoly rule. It did however, count daily newspapers with more than 5% circulation as a voice in the new one-to-a-market rule. If newspapers are either so insignificant so as not to count at all, or only counted if their circulation exceeds an arbitrary percentage, why should they be subject to a total "shut out," in the broadcast license marketplace?

In fact, the FCC has increased, rather than decreased, its regulatory intervention. And I fear that unless checked, it will be the FCC controlling and shaping the marketplace, rather than competition and consumers' desires. According to the heritage foundations calculations based on data provided by the General Accounting Office, "from March 1997 until March 1999, the FCC promulgated 497 rules. This is almost exactly the total number of rules promulgated by the Department of Defense, Veterans Administration, Department of State, Department of Justice, and the Department of Education combined during the same period. Incredibly, in fiscal year 1998, no other Federal agency produced as many major rules as had the FCC," which published more than a quarter of all Federal agency major rules. And this is after Congress passed the Telecommunications Act of 1996 to deregulate the telecommunications industry. Is this deregulation?

I agree with Chairman Kennard that reorganizing and restructuring the FCC for the 21st century is a formidable task, akin to Chairman Kennard's description of "trying to build a 747 while in flight."

But Mr. Chairman, after reading the FCC Chairman's proposal, I am left wondering whether these proposals are meaningful acts of deregulation and streamlining, or just an act of repackaging, with a new name, new title, ready to regulate in the 21st century.

What will the need for the FCC be in the 21st century? Chairman Kennard has a good idea. But is that what we need? According to estimates, the telecommunications industry now accounts for one-sixth of the U.S. economy. There are many examples of rampant competition all around us. Just look at the rate consumers now pay for long-distance. In many areas, consumers now have more than one choice in their local phone provider.

Mr. Chairman, the monopolies of the past that the FCC was trusted to regulate, no longer pose a threat. I believe with substantive congressional reform of the FCC, the FCC in the near future will have a hard time justifying its existence.

Much like how the Civil Aeronautics Board was disbanded after airline deregulation in the 70's. I foresee the day when the FCC will be nothing more than a footnote in text-books.

Mr. Chairman, let me close by saying that I look forward to working with you and the congressional FCC reform task force to ensure that the "FCC-747-airplane" Chairman Kennard speaks of, has its seats removed, engines stripped, and is rebuilt into a hang glider. Then can we truly say that we have a reformed and streamlined Federal Communications Commission.

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PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF WYOMING

Thank you, Mr. Chairman, for holding this very important series of hearings on FCC reform.

During the Subcommittee's hearing in March we heard from FCC Chairman Kennard, who had just released his strategic plan for restructuring and streamlining the Commission's functions and management.

Commissioner Powell, in his testimony at the time, built on Chairman Kennard's plan by proposing additional ways in which the FCC could become more efficient and meet the demands of its customers.

There were several points to Commissioner Powell's testimony that struck me as being necessary before the FCC could move full force into the next millennium.

Specifically, Commissioner Powell highlighted the need for the FCC to limit the rules it administers. Congress stressed the need—in the 1996 Telecommunications Act—to deregulate, when necessary, the telecommunications industry.

Furthermore, Congress provided appropriate tools for the FCC to use to move toward deregulating this vibrant industry.

The telecommunication's industry is moving and evolving at breakneck speed. To be effective, the FCC must evolve and move with the same speed as the industry it regulates.

One avenue that I believe the FCC should utilize more is their forbearance authority under Section 10 of the Act.

I commend Commissioner Powell's foresight on the issue of forbearance and quote from his March 17 statement before this subcommittee, "...the FCC must become a dramatically more efficient place. A decision that comes too late, might as well not have been made at all."

Commissioner Powell's quote provides for a great transition to the next issue I would like to address: the FCC's role in approving mergers.

There is no lack of controversy surrounding the FCC's role in reviewing telecommunication mergers.

When FCC reform legislation is before us, this subcommittee must address the Commission's propensity to duplicate the role other federal agencies already play when considering mergers.

Any role the FCC plays, whether it be in advocating the public interest or otherwise, must not duplicate the role of the Department of Justice or the Federal Trade Commission.

Duplication of roles is time-consuming and unnecessary. Telecommunication companies are unduly burdened by these delays and it causes them and their customers valuable time and money.

There are several more issues that I would like to address, but in the interest of time and to ensure that we hear from our distinguished panel in a timely manner, I will ask a few questions during my 5 minutes and submit several more for the record.

Again, thank you Mr. Chairman for holding this important hearing. I also want to thank Chairman Kennard and the Commissioners for taking time out of their busy day to be here.

I yield back the balance of my time.

Mr. TAUZIN. Seeing no other members requesting time, let me now turn to the important work of this hearing, and this is to hear from the Chairman of the Commission and the other Commissioners on this important topic. Before I introduce you, Mr. Kennard, let me thank you publicly for representing the Commission so admirably before the High-Technology Conference in Louisiana. When was it, a week and a half? Time passes so strangely lately. But to all of you, the Chairman did an extraordinary job representing the Commission at a conference attended by almost 1,400 citizens, and deeply concerned about this fast-moving pace of technology changes in their lives. I want to thank you for that.

I always want to thank each of you for the submittals you personally made and the communications you have made and the assistance you have given Paul in the efforts he has undertaken on behalf of the task force; and finally, to engage my friends on the other side of the aisle and encourage you to literally think about forming a comparable task force that we might link the two together. We are not going to get this thing done unless we are all cooperating across not only party lines, but across the agency's structures.

Let me now welcome the Chairman of the Federal Communications Commission, Bill Kennard, for an opening statement. Bill?

**STATEMENTS OF HON. WILLIAM E. KENNARD, CHAIRMAN; HON. SUSAN NESS, COMMISSIONER; HON. HAROLD W. FURCHTGOTT-ROTH, COMMISSIONER; HON. MICHAEL K. POWELL, COMMISSIONER; AND HON. GLORIA TRISTANI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Mr. KENNARD. Thank you very much, Mr. Chairman. Thank you for those kind words. It is a pleasure to be here, to appear again

before the subcommittee. As always, I look forward to working with all the members of the subcommittee. In particular, I look forward to having a discussion with you, Congressman Sawyer, to learn more about that problem you are having with your cellular telephone provider. We will try to get that straightened out for you if we can.

I have submitted written testimony for the record, which I will summarize briefly. As Chairman Tauzin pointed out in his opening statement, we are clearly living in extraordinary times in the telecommunications industry today. We are seeing glimpses of a very exciting future where the telephone companies will deliver movies, and cable television operators will carry phone calls, and hopefully we will get both over the airwaves.

I would like to take this opportunity to briefly update you on some of the data that we have been compiling at the FCC on the unbelievable economic growth that we are seeing in the telecommunications industry. Economic indicators are up across the board. Over the past 3 years alone, revenues in the communications sector have grown by \$140 billion, climbing to a revenue level of \$500 billion in 1998. That represents an increase of 160,000 jobs in this sector.

And if you look at specific industries, we just see phenomenal growth. In the wireless industry in particular, capital investment has quadrupled since 1993 for a cumulative total of \$60 billion through 1998. Now over 80 million Americans have a mobile phone compared to only 16 million just 5 years ago.

In the long distance marketplace, by the end of 1997, there were over 600 long distance carriers in America. We have seen prices for interstate long distance continue to drop dramatically by approximately 35 percent since 1992. Prices for international calls have fallen by around 50 percent. In fact, over 50 billion more minutes in long distance and international calls were made in 1998 than 1996.

In the local phone sector, we are starting to see the fruits of our procompetitive policies. There are now at least 20 publicly traded competitive local exchange carriers or CLECs with a total market capitalization of \$33 billion. That compares with only 6 CLECs with a market capitalization of \$1.3 billion at the time of the passage of the 1996 act. In the first quarter of 1999 alone, almost a million CLEC access lines were installed.

In the cable sector, operators have invested nearly \$8 billion per year since 1996, constantly upgrading their systems. By the end of the year we anticipate that 65 percent of homes passed by cable will have been upgraded, bringing more channels, enabling additional services, and in particular, high-speed Internet access.

The cable television industry is getting into the broadband world. It is starting to drive competition for high-speed Internet access. We hope that by the end of this year, there will be at least 1½ million cable modem subscribers in the United States.

So obviously the entire telecommunications industry is strong, it is vibrant, it is moving at breakneck speed. As I think we all recognize, we must also have an FCC that changes along with the industry and remains relevant to changes in the marketplace.



The 1996 act established a blueprint for restructuring the industry, reorganizing the industry along competitive lines. The FCC's Strategic Plan is the work plan for carrying out the blueprint that you wrote in the 1996 act.

We have put a lot of work into this Strategic Plan. It is not a unilateral proposal. We reached out to lots of our stakeholders. We reached out to industry, consumer groups, the academic community, State and local governments, organizational experts.

And I was interested, Mr. Chairman, to hear that you were concerned that the industry was not being forthright with you in coming forward with recommendations. It has been my experience as Chairman of the FCC that the telecommunications industry for the most part is not a shy or retiring lot. They are not shy about communicating their concerns to us. They certainly did that in our forums. They communicate, I know, to you and to the press oftentimes. But I would just reiterate the importance that you stress of complete candor and openness in dealing with the industry, because we really need to hear from them as we move ahead with this plan.

We have held a number of forums seeking input and much of the input we received focused on how the FCC should be restructured because of really three principal developments in the industry: competition, convergence, and globalization.

There is a great deal of consensus among our stakeholders that the FCC should focus on what its core missions should be in the future, and these are, (1), universal service and consumer protection and information, one category; (2), enforcement and promotion of competitive markets both domestically and internationally; and (3) spectrum management.

And so the Strategic Plan we presented to you really focuses on how the FCC should be organized to further those three principal core missions.

After we presented our Strategic Plan to you in August, we convened another forum and brought all our stakeholders together again. I would say that they were generally complimentary about the plan. I think that the one thing that we heard almost universally is the need for the FCC to move ahead quickly on implementation, something that you mentioned in your opening, Mr. Chairman. Last week, we held an FCC senior management meeting to plan the next steps and keep the momentum going.

Now some have told us, including you, Mr. Chairman, that 5 years is too long. I wanted to comment on that. First of all, the reason why we picked 5 years for our Strategic Plan is because that is consistent with the requirements of the Government Performance and Results Act. That act, as you know, requires government agencies to set forth a 5-year blueprint or strategic plan for reinventing themselves. So we selected 5 years. But I don't want anyone to think that 5 years is the end point; that is, that we have to wait for 5 years to get all the benefits of this plan.

We are rolling this plan out as we speak. In fact, today I am very pleased to announce that we are setting up the Enforcement Bureau and the Consumer Information Bureau, which I know you all heard about, to become effective on November 8, and we are very proud that we have done the work to get those two new bureaus

in place. And I thank the members of this committee for supporting us in that effort.

In thinking about our Strategic Plan, Mr. Chairman, I was reminded of one of the first meetings that you and I had when I first became Chairman of the FCC. We talked about this issue, how we would reform the FCC for the next millennium, and I remember at that time we talked about reorganizing the FCC along functional lines, and that was an idea that you were talking about then. And if you look at our Strategic Plan, it calls for a reorganization of the agency along functional lines, as we talked about when we first met a few years ago.

I also wanted to take this opportunity to publicly thank my colleagues at the Commission for their support and work not only in helping to develop this plan but also their support in a number of key areas. Commissioner Ness has been doing outstanding work on international issues and with regard to digital television. Commissioner Furchtgott-Roth has provided some excellent suggestions to us on the Biennial Review, constantly pushing us to be more aggressive in our Biennial Review responsibilities. Commissioner Powell has shown tremendous leadership in handling the Y2K issue for the Commission and for the country and for providing very good analysis on our competition issues. And, of course, Commissioner Tristani has been a true leader in the V-chip area and has shown really unwavering commitment and courage in fighting for consumer issues.

So I feel very honored to chair this important agency at this time, with a group of such stellar colleagues, and I would be remiss if I didn't mention how blessed all of us are to be able to work with an extraordinary staff at the FCC. We can write strategic plans until the cows come home, but if we do not have a staff that is dedicated and professional and hardworking, it is just so much paper. We have a lot of work ahead, but I am confident that if we continue to work together as an agency, as colleagues, and also with the fine FCC staff, we will be able to create an FCC for the digital age that will make us all very proud. Thank you.

[The prepared statement of Hon. William E. Kennard follows:]

PREPARED STATEMENT OF HON. WILLIAM E. KENNARD, CHAIRMAN, FEDERAL  
COMMUNICATIONS COMMISSION

Thank you, Chairman Tauzin, Ranking Member Markey, and Members of the Subcommittee for the opportunity to appear before you today to discuss the new FCC for the 21st Century.

This hearing presents a welcome opportunity to further the dialogue that we began last March when my colleagues and I testified before this same Subcommittee on the future of the Federal Communications Commission (FCC).

In March, I told the Subcommittee the era of convergence—an era in which phone lines will deliver movies, cable lines will carry phone calls, and the airwaves will carry both—necessitates a radically restructured FCC. I told you that in a world where old industry boundaries are no longer and competition is king, we need a New FCC.

I am proud to report we have taken important steps towards restructuring the Commission. As you know, this past August, I submitted my five-year draft strategic plan to Congress which I intend to serve as our blueprint for change. This plan builds upon the conceptual framework that I proposed in March.

FIVE-YEAR VISION

In five years, we expect United States communications markets to be characterized predominantly by vigorous competition that will greatly reduce the need for di-

rect regulation. We also expect that the advent of Internet-based and other new technology-driven communications services will erode the traditional regulatory distinctions between different sectors of the communications industry. The FCC's primary goals of promoting competition in communications, protecting consumers, and supporting access for every American to existing and advanced communications services will remain paramount. What will change are the means and mix of resources necessary to achieve these goals in an environment marked by greater competition and convergence of technology and industry sectors.

In this new environment, the FCC must focus on sustaining competitive communications markets and protecting the public interest where markets fail to do so. As I said in March, our core functions will include: i) universal service, consumer protection and information; ii) enforcement and promotion of competitive markets domestically and worldwide; and iii) spectrum management.

As a result, a number of the FCC's current functions and regulatory structures no longer will be necessary. The FCC as we know it today will be very different both in structure and mission. Increased automation and efficiency will enable the FCC to streamline its licensing activities, accelerate the decisionmaking process, and allow the public faster and easier access to information. The FCC will be a "one-stop, digital shop" where form-filing and document-location will be easy and instantaneous.

Over the next five years, the FCC must wisely manage the transition from an industry regulator to a market facilitator. The enactment of the Telecommunications Act of 1996—and the establishment of a new pro-competitive, deregulatory model for communications policy—necessitates a reassessment of our core policy functions, structure, and processes. New competitors and technological innovation are currently transforming communications markets, but history has shown that markets that have been highly monopolistic often do not naturally become fully competitive. History has also shown that domestic markets that have been protected from foreign competition do not naturally open to global competition.

Therefore, during this crucial period of transition, the overall strategic objective of the FCC must be to continue to promote competition, open markets, and technological innovation, while also continuing to protect and empower consumers as they navigate the new world of communications. At the same time, the Commission must significantly revamp its functions, processes, and structure to meet the challenges of a rapidly progressing global information-age economy and an evolving global communications market.

Today, we see tantalizing glimpses of the competitive, deregulated telecommunications marketplace that Congress had in mind. Many markets, such as mobile wireless and wireline long distance markets, are already quite competitive, and many—but by no means all—of the fundamental prerequisites for fully competitive, deregulated local telecommunications markets are now in place. In many markets, consumers are receiving the benefits of competition through lower prices, greater choices, and better quality service.

This is not to say, however, that fully competitive markets are inevitable. Vigorous enforcement of the fundamental prerequisites for competitive markets and expeditious dispute resolution will remain necessary for some years to come. Consumers must also become familiar with the myriad new communications options and providers available, as well as the new demands which emerge from the advent of increased competition. Consumers do not yet have the benefit of experience in addressing the challenges of a communications marketplace that looks and functions like other competitive industries. We must continue to ensure, therefore, that the momentum toward competitive markets moves forward on a technology-neutral basis, that we continue to cultivate public support for this change, and that all Americans benefit from the communications revolution.

#### DEVELOPMENT OF THE STRATEGIC PLAN

The March report served as the conceptual framework for the Commission's senior managers to meet and discuss the implications of the changing communications marketplace for the FCC and for the American people. From these discussions, we developed the framework of this Strategic Plan, including our draft vision statement, goals and major objectives. Next, senior executives from each of our Bureaus and Offices were asked to review their organization's functions, determine if they were still essential to the agency's key missions as determined by senior management, and provide specific policy initiatives and performance measurements for the next five years.

We gathered extensive input from our stakeholders to help us develop this strategic plan. We held forums seeking the views of general industry, consumer, state

and local government representatives, academic and organizational experts, and our employees on the FCC's role in the 21st century. Much of the input we received from our stakeholders focused on how competition, convergence, globalization, and the Internet are currently affecting the communications marketplace, and will continue to do so in the future. Interestingly, there was a good deal of consensus from our stakeholders about the FCC's proposed core functions, as set forth in our March 1999 report.

#### THE STRATEGIC PLAN

The underlying premise of the plan is that the FCC must significantly restructure and streamline its functions, processes, and organizational structure to better serve the American people in the new millennium. Competition and convergence of technologies and industries require that we comprehensively transform our functions, processes, and structure to become a faster, more functional, and flexible agency.

As a result of our discussions and forums, we identified four critical goals to carry out our core mission. For each of these goals, we established specific objectives and policy initiatives that need to be implemented to achieve these goals fully. To assess whether we are on track in achieving these goals, we then established specific performance measurements to be achieved within five years on key dimensions such as industry outcomes, consumer benefits, and Commission output. These five-year overall performance measures will serve as the primary indicia of progress toward the Commission's long-term vision of fully competitive communications markets and our transformation into a model agency for the Digital Age. Finally, we are also taking various actions in the short term. For while our blueprint for change is for five years, we are taking immediate steps in all areas to facilitate the eventual achievement of our four major goals.

##### *(1) Create A Model Agency For The Digital Age.*

Our first goal is to create a model agency for the digital age. This means that as we promulgate policies conducive to advances in the information age, we must lead the way in electronic government. Across the agency, we must invest in new technology that will allow us to be as responsive to the public as possible. Specifically, we must continue to automate our processes and to make more information available to the public electronically and on an interactive basis.

A comment that we heard over and over at our forums was that we need to find ways to get the FCC's work done faster and reduce the levels of review in the agency. We need to be a faster, flatter, and more functional agency in order to promote industry progress rather than impede its momentum.

Some sectors of the telecommunications market move so fast that by the time a public notice on a proposed rule is issued, and comments are gathered, the market has bypassed the conditions that gave rise to the proposed rule in the first place. The regulatory process is incremental. The market process is not. The regulatory process, by definition and by law, has to be linear and methodical, to provide due process. The market process, by contrast, is chaotic and nonlinear, and, because of that, very often unpredictable.

The historic model for a regulator, is top-down, command-and-control, with chiefs, bureaus and support staff. The model for a market facilitator, the model we are moving to, is a flatter and more fluid organization. Its work units are smaller and more responsive. This is possible because much of the governance—the microdecision-making—is passing from the FCC to the market. More *governance* from the marketplace means *less government* from the FCC.

The FCC is currently structured along the traditional technology lines of wire, wireless, satellite, broadcast, and cable communications. As the lines between these industries merge and blur as a result of technological convergence and the removal of artificial barriers to entry, the FCC needs to reorganize itself in a way that recognizes these changes and prepares for the future. A reorganization of the agency along functional rather than technology lines will put the FCC in a better position to carry out its core responsibilities more productively and efficiently. There was consensus in each of the public forums and in many of the other comments we have received that a reorganization along these lines would not only be more efficient, but is a necessary prerequisite to competition and convergence. This is not an easy task and I look forward to detailed discussions with you and our other stakeholders on the best way to move forward on this reorganization. We took a huge step forward with Congress's recent approval of our new Enforcement and Consumer Information Bureaus.

As we move toward a faster, flatter, more functional agency, we must also invest in our employees and capitalize on their integrity and wealth of expertise. It is the employees who have made the Commission a unique and vital organization and who

will be at the forefront of defining how the FCC of the future responds to the dynamic changes in today's communications industry. Moreover, we must minimize workplace disruption that may result from restructuring efforts through staff retraining, reassignment, and other methods. We must ensure that we have a critical mass of trained personnel and that we empower our staff to embark upon strategic thinking with clear policy direction.

*(2) Promote Competition In All Communications Markets.*

Our second goal is to promote competition in all communications markets. Entry barriers (legal, economic, or operational) in communications markets are antithetical to the development of robust competition. Elimination or reduction of such barriers enables new competitors to enter communications markets easily and enhance consumer choice. We must also focus on the international marketplace and seek additional market opening commitments from other countries.

As competition becomes a reality, deregulation must occur. Eliminating outdated rules will play an important role in accelerating the transition to fully competitive markets. Consumers ultimately pay the cost of unnecessary regulation. Thus, one of our primary objectives must be to deregulate as competition develops and to substitute market-based approaches for direct regulation. This will be a central tenet of our 2000 Biennial Review. In addition, we must resist imposing legacy regulations on new technologies. Our goal should be to deregulate the old instead of regulating the new.

An undesirable by-product of the rise of competition in various telecommunications markets has been an increase in fraudulent practices by certain providers of telecommunications services. In the fast-paced, newly developing world of communications competition, we must be able to respond swiftly and effectively to complaints that companies are taking advantage of other companies or consumers. Effective use of the Commission's enforcement resources is critical to ensure full implementation of the Communications Act and the Commission's rules designed to open communications markets to competition, and enhance choice for consumers. Effective enforcement is also essential to maintain public support for deregulation.

Competitive markets work only when consumers have the information required to make informed choices. The creation of the new Consumer Information Bureau will provide consumers a one-stop shop for obtaining the information they need to make wise choices in a robust and competitive marketplace.

*(3) Promote Opportunities For All Americans To Benefit From The Communications Revolution.*

Our third goal is to promote opportunities for all Americans to benefit from the communications revolution.

Congress has long recognized the importance of this goal and codified it in Section 1 of the Communications Act of 1934. The statute states that the purpose of the Act is to "make available to all the people of the United States, without discrimination... a rapid, efficient, Nationwide, and worldwide wire and radio communication service... at reasonable charges." Where competition cannot ensure such access, the FCC will continue to take action to support and promote universal service and other public interest policies.

As the nation's communications sector continues to undergo unprecedented growth, we must ensure that Americans of all backgrounds have the opportunity to benefit, not only as consumers of communications services, but also as employees or owners of communications businesses. In particular, we need to open the doors of opportunity to women, minorities, and small-scale entrepreneurs across all communications industries. This goal is critical to preserving diversity of viewpoints and a vibrant democracy, and to ensuring that all Americans are able to take advantage of the dynamic telecommunications market.

*(4) Manage The Electromagnetic Spectrum (The Nation's Airwaves) In The Public Interest.*

Our fourth and final major policy goal is to manage the use of the electromagnetic spectrum, the Nation's airwaves, in the public interest for all non-Federal government users, including private sector, and state and local government users. Fundamental to this mandate is the difficult task of advancing the pro-competitive goals of the Communications Act, while at the same time ensuring that other public interest goals are met. Competing demands and changing technologies make spectrum management a unique challenge. Since spectrum is a finite public resource, it is important that it be allocated and assigned efficiently to provide the greatest possible benefit to the American public. It is also important to encourage the development and deployment of technology that will increase the amount of information that can be transmitted in a given amount of bandwidth. To meet these challenges, the Com-

mission must constantly strive to improve the way it both allocates and assigns spectrum. As part of this effort, the Commission must privatize functions where possible and promote an active secondary market to ensure that spectrum is being used for the highest value end use.

The past few years have seen tremendous growth in information technology, particularly in the wireless industry. As markets become more competitive and new services are introduced, demand for spectrum will increase. The Commission must seek new methods to make spectrum available and ensure that it is put to its highest value use. Increasing the supply of spectrum will decrease the cost of using spectrum and thereby expand the output and lower the price of spectrum-based services. It will also create new opportunities for competitive technologies and services for the American public.

#### EXTERNAL FACTORS

A number of external factors will affect our ability to achieve our vision of fully competitive communications markets in five years. The fortitude with which the FCC and the states enforce the pro-competition mandates of the 1996 Act will continue to be a significant factor. Whether or not litigation delays the introduction or implementation of key FCC and state decisions is another factor. Our success will depend on whether previously monopolized communications markets are successfully opened up so that new entrants can compete in those markets.

Nonetheless, a range of additional external factors—some of which can be influenced by FCC actions, and others which largely cannot—may affect the continued development of competition in communications markets. For example, convergence-driven competition depends heavily on investments in new technology by incumbent and new communications providers. The breadth and depth of long-run consumer demand for new services remain unknown and therefore may also impact the development of competition.

The prospects for competitive communications markets are significantly affected not only by national developments, but also by developments in world markets. The opportunities for United States telecommunications companies can be more fully realized if other countries join us in fostering competition in their communications marketplaces. Market access restrictions in foreign countries significantly impede U.S. companies' ability to compete on a global scale.

Finally, the Commission's ability to carry out its vision is largely dependent on adequate resources from Congress to carry out critical activities. In many cases, the FCC will need to redeploy existing budget and staff resources to address changing priorities. In addition, many of the initiatives listed in the plan to reinvent ourselves as a model agency for the digital age may require Congressional approval and continued adequate funding. Additional resources also may be required for new initiatives, for example in the areas of universal service, enforcement of disability access provisions, enforcement of slamming/cramming rules, electronic government, alternative dispute resolution, and spectrum management, all of which ultimately will result in a more effective and efficient organization. Our success is tied directly to our ability to maintain critical staffing levels and fund ongoing and new initiatives.

#### NEXT STEPS

We look forward to working with Congress, industry, consumers, and all our stakeholders to refine our Draft Strategic Plan. It is a work in progress and we are committed to ongoing discussions and additional input. Our goal is a blueprint for change that we can all be proud of and commit to as we enter the new millennium.

We plan to conduct ongoing reviews of our goals and objectives to ensure that they accurately represent our highest priorities, even as the communications marketplace continues to evolve. In addition, we will conduct ongoing reviews of our policy initiatives and programs to ensure their effectiveness, and we will continuously assess our progress toward achieving the performance measures proposed in this plan.

#### CONCLUSION

Congress provided the blueprint for competition by passing the Telecommunications Act of 1996. This strategic plan is intended to provide a roadmap to guide the FCC's transition from an industry regulator to a market facilitator.

The FCC was created to serve the public, and now it has recommitted itself to serve the public in a new century, in a new fashion.

We have a lot of critical work in front of us: local competition rules, universal service reform, access reform, BOC entry into long distance, promoting the deployment of high-speed Internet access, consumer protection measures such as truth-in-

billing, and opening up more spectrum for new services.—to name just a few. I am committed—and the FCC's staff are committed—to taking on all of these challenges as well as reinventing the FCC. For, in the end, both will better serve our customers—the American people.

The changes that we propose are not trivial. The FCC, in five years, will be unrecognizable to those of us who know it today. It will be re-made for a new century and for a rapidly changing industry. But no matter how much it changes, the FCC will remain committed to promoting competition, fostering the growth of new technology, and bringing the opportunities inherent in the telecommunications revolution to all Americans.

And I mean *all* Americans. As I have reiterated time and time again, this Information Age must be the age of inclusion. No one should be left behind.

Thank you for your time. I'd be pleased to answer any questions.

Mr. TAUZIN. Thank you very much, Mr. Chairman.

Let me make one correction for the record. My comments regarding the industry was not that they were not forthcoming with ideas and suggestions. They have been. They have been very candid about that. My concern is when they talk about problems they have with the rate, they don't want to go public. They do it all off the record, confidentially, because they are concerned about consequences. That is not a good comment. That is what I meant. We need to examine them more thoroughly and find out why that is so.

I thank the Chairman for his comments.

Mr. TAUZIN. Let me now welcome Commissioner Susan Ness to the hearing and ask Ms. Ness if she has comments.

#### STATEMENT OF HON. SUSAN NESS

Ms. NESS. Thank you, Mr. Chairman. I welcome the opportunity to appear before you today to hear your thoughts on FCC reform and to proffer my views on Chairman Kennard's excellent proposal, A New FCC for the 21st Century. As you said, Mr. Chairman, and as Mr. Kennard elaborated, the marketplace is literally changing before our eyes. Commercial deployment of the Internet and deployment of IP protocol technology have fundamentally and irreversibly transformed markets. Technological advances have spawned a stunning array of innovative products and services. Competitors are beginning to offer bundles of voice, video and data services at enticing prices. Reforms embodied in the 1996 Telecommunications Act and in the WTO Telecom Agreement have spurred global competition, resulting in plummeting prices for wired and wireless intrastate and international telecommunications.

The FCC has embraced these revolutionary changes, and the blueprint for FCC reform outlines a vision of a structurally and directionally reordered and streamlined FCC. I commend the Chairman and the FCC staff for their excellent work. I support the principal goals of the plan. I won't repeat them; they were already discussed by the Chairman. But I did want to comment on a few specific proposals.

First, I support the notion of reorganizing the Commission along functional lines. The Commission's current structure invites industry-specific analysis which runs counter to our desire to achieve cross-industry competition. Use of multibureau task forces to work on items and our Spectrum Coordinating Committee helped to alleviate some of that problem. Nonetheless, reorganization along

functional lines should facilitate a cross-pollinization of policy ideas. I recognize however, that we are still implementing an act which is organized along industry lines.

Second, wireless technology is going to be a major component of future services, and I strongly support the exploration of innovative spectrum allocation and assignment mechanisms to promote efficient spectrum use, including where appropriate private band plan managers. Also, flexibility is key to ensure that licensees can respond quickly to consumer demands. And new technologies such as software-defined radio and ultra-wideband have tremendous potential; and we need to be able to explore those possibilities in a new spectrum environment. I therefore especially applaud proposals to strengthen the technical and spectrum-planning expertise of the Commission. It takes very seasoned engineers to be able to understand what is happening as we try to have spectrum sharing to facilitate efficient use.

Therefore, the addition of technologists at the Commission is going to be extremely helpful. This is particularly true in the international arena where we are working with our regulatory partners abroad to promote spectrum efficiency and global competition.

Finally, I enthusiastically support the establishment of a consumer advisory panel and the consumer information bureau. These will help inform our thinking as we endeavor to serve the public interest. All too often we see that consumers are absent from the mix of folks that come before us. They are a critical component that I would like to see involved on a day-to-day basis.

While the proposed Strategic Plan is an excellent road map, the true road test will come as we address each matter before us. We must ask ourselves whether intervention truly is necessary or whether we can avoid regulation; how we can narrowly tailor our regulations when we do intervene; and how we can creatively use our tools for the allocation and assignment of spectrum. Ultimately it is our successful answers to these questions that will determine how rapidly Congress's vision of a competitive and deregulatory communications marketplace is fulfilled, and it is only then that the American public will truly reap the benefits of the proliferation of new services and convergence that will characterize the new millennium.

Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Susan Ness follows:]

PREPARED STATEMENT OF HON. SUSAN NESS, COMMISSIONER, FEDERAL  
COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today.

I welcome this opportunity to address proposed reforms to the Federal Communications Commission as we greet the new Millennium. In particular, I am pleased to discuss with you my views on FCC Chairman Kennard's strategic plan—"A New FCC for the 21st Century." This ongoing dialogue between our authorizing subcommittee and the FCC is especially important as we proceed to reform our agency based upon the growing competition and convergence in the communications industries.

THE CHANGING MARKETPLACE

The marketplace is literally changing before our eyes. Advances in technology have produced enormous benefits to consumers. Services that did not exist ten, five or even two years ago now permit instantaneous contact between co-workers, family,



and friends. These same services provide for immediate receipt of news and information anywhere in the world, and ready access to extensive data files wherever they are stored.

Cable companies now are launching telephone service and Internet access; telephone companies are deploying high-speed lines for the delivery of video services and data; satellites are blanketing the country with video, voice and data services; palm sized devices are providing two way wireless delivery of voice and data, including connections to the Internet; and broadcasters are exploring ways to enhance the airways with interactive information services.

Wireline, wireless, cable and satellite service providers are offering—or are contemplating offering—bundles of voice, video, and data services. Mergers and joint ventures are forming—and dissolving—at a dizzying pace, as companies hedge their bets and struggle to find a competitive niche in a rough and tumble marketplace.

Prices for many services have plummeted as competition takes hold. Where wireless calls recently cost 30 to 50 cents a minute with hefty roaming fees, the development of competitive nationwide cellular and PCS networks has prompted the offering of buckets of wireless minutes with nationwide rates as low as 10 cents per minute. Long distance calls that cost 25 cents per minute in 1996 have been replaced with campaigns by competing carriers touting five cents per minute. Sports and movies that recently were found only on broadcast networks and cable systems now are delivered to our homes by direct broadcast satellites and power companies.

The Telecommunications Act of 1996 and the World Trade Organization Basic Telecommunications Agreement (whose core principles reflect concepts embodied in the Act) have spurred many of these changes. Another big driver of change has been the commercial deployment of the Internet—coupled with the development of Internet protocol technology—which has revolutionized the dissemination of information and literally transformed commerce, creating a new and thriving marketplace that defies geographic boundaries and traditional market structures.

The implications of the Internet and Information revolution for telecommunications policy are profound. At the FCC, we are anticipating and responding to these tumultuous changes. Chairman Kennard's strategic plan outlines a vision of a structurally and directionally reordered and streamlined Commission for the 21st Century. I commend the Chairman and the staff for their fine efforts in developing a comprehensive and responsive plan.

#### THE GENERAL GOALS OF THE STRATEGIC PLAN

Pursuit of the Strategic Plan's four principal goals should ensure that new services at lower prices reach the market as expeditiously as possible.

##### *1. FCC Reform*

First, I agree that we must reform the agency to act faster and more responsively to requests from licensees and the public. Licenses must be issued in timely fashion with less paperwork; actions on requests to provide service must be taken without undue delay. Lengthy processing times and cumbersome procedures hamper innovation and competition. Reorganization along functional lines—bringing together FCC policy experts from each of the industry sectors—will enable us to comprehend better marketplace trends and be more responsive.

##### *2. Promote Competition*

Second, it is critical that we continue to promote competition and swiftly eliminate rules that intrude in competitive markets and that do not provide tangible benefits to consumers. As a general matter, new services should not need new authorization; and we should remove any rate regulations, service restrictions, and record-keeping and filing requirements that no longer serve the public interest. Our forbearance authority and biennial reviews are excellent tools.

Where service providers violate our rules, we must take swift and deterrent action. Speedy enforcement is critical, especially where violations are aimed at disadvantaging competitors or defrauding the public, including practices like slamming or cramming.

##### *3. Access to Affordable Telecommunications by All Americans*

Third, I agree that we must continue our efforts to ensure that all Americans—including those living in rural and high cost areas, those with low incomes, those with disabilities, and those living on Indian Reservations—have access to quality basic and advanced telecommunications services at affordable rates. In the last few years we have taken steps to enable consumers with low incomes or who live in high-cost rural areas to receive telephone service at affordable prices. We have acted to extend telecommunications services to classrooms, libraries and non-profit rural

healthcare facilities. As we move into the new millennium, we must continue these efforts to implement your vision as embodied in the law.

#### *4. Efficient Management of the Spectrum in the Public Interest*

Finally, and perhaps crucial to the three goals just discussed, we must develop new ways to manage Spectrum. Spectrum planning must create opportunities for multiple service providers, including new entrants, as mandated by the Act. We must seek ways to manage the nation's airwaves more efficiently, as an increasing number of innovative and competitive services make their way to the marketplace. And as the Commission's representative to the World Radio Conferences in 1995 and 1997, I am acutely aware that, through early high-level government participation in the international planning and negotiation process, we can make a significant difference in the opportunities that are available both for U.S. industry abroad and American consumers at home.

#### SPECIFIC PROPOSALS IN THE STRATEGIC PLAN

I would now like to highlight some of the specific proposals in the Strategic Plan that are designed to implement these four principal goals:

##### *1. Increasing Technical Expertise*

First, I strongly support those aspects of the plan that are aimed at strengthening the technical and spectrum planning expertise of the Commission. Some of the Commission's most productive actions in the recent past have included the authorization of newer and more efficient spread spectrum technologies and the establishment of allocations for shared spectrum.

The FCC's ability to assess technology and efficiently manage the non Federal government use of the spectrum will be increasingly important in the new millennium, and will be enhanced by the proposals in the plan. These proposals emphasize recruitment of high-quality staff knowledgeable about the communications marketplace. Chairman Kennard has proposed to strengthen the technical capabilities of the Commission by hiring more engineers and technologists, and to re-establish an entry-level engineering training program, a proposal I welcomed in my testimony before you last March.

##### *2. Innovative Spectrum Policies*

Second, I strongly support the proposed exploration of innovative spectrum assignment mechanisms to promote efficient use of the spectrum. The use of more flexible allocations and relaxed service rules will enable competitors to respond more rapidly to changes in the marketplace and will create value for consumers and other users.

Further development of the auction process will continue to increase the effective and orderly licensing of services. Facilitating the ability of licensees to aggregate and disaggregate frequency by fostering a secondary market for spectrum is an innovative approach, worthy of consideration. I am also interested in exploring our ability to combine auctions and the use of private band managers and coordinators in an effort to privatize as much as possible the site specific licensing that is desirable in many services and in congested channel bands. Finally, we must examine technological breakthroughs, including software defined radio, ultra-wideband, and other spectrum-efficient methodologies, which could fundamentally change the way in which we allocate spectrum nationally and globally.

##### *3. Enhancing Global Competition*

Third, I applaud the Chairman's proposal to work with regulators from other countries to promote full implementation of existing WTO commitments and to resolve outstanding spectrum issues at the upcoming World Radiocommunications Conference. U.S. consumers will benefit greatly from the further reduction of entry barriers in foreign communications markets and the development of global standards that encourage competition and innovation in wireless and satellite services.

I have long been concerned about the adequacy of resources for our international representation in spectrum planning and negotiation, as well as our ability to encourage opening of foreign telecommunications markets. I am pleased that the Chairman has made a priority of adequately identifying, coordinating, and advocating our international interests, and I hope that the other U.S. agencies as well as Congress will support this effort.

##### *4. Streamlining the FCC*

Fourth, I support the Chairman's efforts to find ways to speed up the Commission's adjudication and rulemaking processes. Consumers and carriers alike will benefit from faster Commission actions made possible by expeditious treatment of petitions seeking reconsideration or review of decisions, greater use of alternative

dispute resolution mechanisms and the accelerated docket, as well as generally improving the staff's ability to resolve complaints against carriers.

As I noted previously, I support the proposal to organize the Commission along more functional lines. Indeed, we have already headed down that path, with the establishment of the Enforcement and Consumer Information Bureaus.

As part of this effort, it is my hope that we can explore new techniques to build industry consensus on issues that come before the Commission. Industry-driven solutions to problems generally expedite the resolution of issues pending before the Commission—provided that consumer interests are also represented at the table.

##### *5. Ensuring the Public Interest is Served*

In that context, I am pleased to see the proposed establishment of a consumer advisory committee. Commission actions have a profound effect on the public. Unfortunately, the public generally is woefully underrepresented in our proceedings. I hope that this modest proposal, coupled with efforts to beef up consumer information, will help us better to assess what is in the public interest.

#### CONCLUSION

The proposed Strategic Plan is an excellent blueprint for the FCC as we enter the new millennium. The real challenge, however, in reforming the Agency remains. As we address each decision before us, we must ask ourselves: When should we intervene and when should we avoid regulation? How can we narrowly tailor our regulations when we do intervene, and then reduce their burden, as markets grow more competitive? How do we creatively use our tools for the allocation and assignment of spectrum? How can we most expeditiously meet the needs of our consumers?

Ultimately, it is our successful answers to these questions in each instance that will determine how well and how rapidly Congress' vision of a competitive and deregulatory communications marketplace is fulfilled. And it is only then that the public will truly reap the benefits of the proliferation of new services and convergence that will characterize the new millennium.

Thank you for the opportunity to testify before you today. I am happy to answer your questions.

Mr. TAUZIN. Thank you very much, Ms. Ness.

The Chair is now pleased to welcome the Honorable Howard Furchtgott-Roth for an opening statement.

#### STATEMENT OF HON. HAROLD W. FURCHTGOTT-ROTH

Mr. FURCHTGOTT-ROTH. Thank you, Mr. Chairman. It is good to be home. It is good to be back in this chamber where I spent many a day and many fond memories of this place.

I have a prepared statement that I would like to submit for the record, AND I would just like to make a few other comments.

Mr. TAUZIN. Without objection, all written statements are part of the record.

Mr. FURCHTGOTT-ROTH. Thank you, Mr. Chairman.

This room is part of the Commerce Committee and it is part of Congress. This meeting here today, this hearing, it is about Congress, it is about congressional oversight far more than it is about the FCC. I recall that Congress has hearings that you can put in two general categories: oversight and legislative. We have these oversight hearings in part for Congress to learn from the agencies, but in large part also for the agencies to learn from Congress. I am very much looking forward to learning from you all today.

The Commission has enormous responsibilities. We do some things well, we do some things maybe not quite so well. We have heard about a few of them today. I am sure we are going to hear about more as we go forward.

Much has been made about the organizational structure of the FCC. I must say there are scores of Federal agencies around Washington. I doubt there is anyone who can describe in any detail how

each of these is organized. They are all organized in different ways, and I don't think there is anyone who could say that how well each of these agencies performs its duties that is related in any predictable way to how well it is organized.

Organizational structure matters, but what matters more is having the Commission follow the law as it is written. If there are problems in how the Commission is executing the law, they will not be cured by organizational changes. If the Commission is doing something well, that performance will not be substantially degraded by organizational changes.

Chairman Kennard and the FCC staff have invested a lot of time and have come up with a very fine and well-thought-out product and a Strategic Plan. It has not yet come before the Commission for a vote. It is an interesting plan, one that I think has a lot of merit, one that I don't know that I would agree with everything in it, but I certainly recognize the very fine quality of it, and one that frankly the Commission under section 5(b) of the act could implement on its own, but as a Commission as a whole.

Finally, I would like to note that I share many of the committee's concerns this morning, particularly those of Chairman Bliley, on transparency process, and I welcome the oversight of this committee. Thank you, Mr. Chairman. I look forward to the remainder of the hearing.

[The prepared statement of Hon. Harold W. Furchtgott-Roth follows:]

PREPARED STATEMENT OF HON. HAROLD W. FURCHTGOTT-ROTH, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION

Chairman Tauzin, Congressman Markey, distinguished Members of this Subcommittee, thank you for the invitation to testify on "Federal Communications Commission Reform for the New Millennium."

Chairman Kennard, the Bureau chiefs, and representatives of the Office of Plans & Policy have, I am sure, worked hard on this *Chairman's* Draft Strategic Plan. Parts of this document have real merit. I am equally sure, however, that if I were asked to cast a formal vote to adopt this Plan as that of the *Commission's*, I would have real issues with the document as written. A brief review of the Plan reveals that it includes as "key policy initiatives" some matters that are controversial and about which Members of this Committee have expressed serious concern.

At this point, however, allow me to make a more general point about FCC reform and the direction in which it should be headed: plans for internal agency restructuring are well and good. Under section 5(b) of the Communications Act, "the Commission" as a whole can reorganize the agency in order to promote its proper functioning. I am skeptical, however, that organizational restructuring alone can do much to improve the efficiency—much less the policy positions—of the Commission.

The federal government consists of scores of agencies, no two of which have identical organizations, and each of which changes organizational structure from time to time. No review of these federal agencies—or of private business organizations, for that matter—would show that organizational structure is the primary criterion that distinguishes efficient from inefficient agencies, or that separates those agencies that adhere closely to the law and Congressional intent from those that do not. When a member of Congress objects to the processes or decisions of a government agency, organizational structure is rarely the primary target of his or her frustration.

The most important "reform" that could occur at the agency—*i.e.*, the one that would go the furthest toward curing the institutional deficiencies for which it is sometimes criticized—would be for the Commission to simply follow the law as Congress has written it. If we concentrated on executing the tasks clearly assigned to us by Congress, and in doing so followed the guidance provided by the statute—as opposed to initiating our own regulatory schemes without statutory direction to channel them—we would do better by all involved.

It is my firm belief that Congress—not the Federal Communications Commission—makes the basic decisions about federal telecommunications policy. Indeed, if Congress did *not* make those fundamental policy choices, we would be faced with an unconstitutional delegation of authority. These legislative choices are spelled out in the Telecommunications Act of 1996 and in the Commission's enabling statute, the Communications Act of 1934. Taken together, these statutes establish the limits of the Commission's power in implementing Congressional mandates and define the substance of those mandates.

The Telecommunications Act of 1996 gave the Commission the great responsibility of implementing the dramatic changes effected by the Act. The role of the Commission was, in many respects, fundamentally altered by the Telecommunications Act of 1996.

Those changes have been largely for the better. Four years ago, regulation at the federal, state, and local levels was based on a framework that placed businesses in discrete regulatory categories. Businesses were pigeonholed by their operations, and limitations on their activities by line of business, by territory, and by customer class were defined by those identities. A broadcaster was a broadcaster, and nothing else. A local exchange carrier was a local exchange carrier, and nothing else. And so on.

Regulation meant that competition was, at best, managed by government agencies and, at worst, illegal. Consumers paid a high price for this form of regulation: higher prices than necessary; lower quality than necessary; fewer choices than necessary; and less innovation than necessary.

Advances in technology and changes in the law, however, have worked to the advantage of consumers in the past few years. It would be wrong to attribute all of the benefits of lower prices, new services, new innovations, and improved service quality to changes brought on by the Telecommunications Act of 1996. But it would be equally wrong to assert that the increased competition made possible by that Act has meant nothing.

I have not always agreed with the Commission's interpretation of specific sections of the Act. Commission rules and interpretations have, in my opinion, been at times much broader than the relevant statute, and thus in excess of statutory authority and unlawful under the Administrative Procedure Act. In some instances, the Commission has simply failed to implement the law. But where the Commission has acted in accordance with the directives and limits of the statute, I believe the American public has been well served. And where we have not implemented the law as written, consumers could have been better off.

There are those who say that the Telecommunications Act of 1996 has failed. I disagree. There are those who say that simply restructuring the FCC will remedy any possible shortcomings of the Act. I disagree.

I think that we need to finish the job that we have started but have yet to complete. We should implement faithfully the 1996 Act by its terms, and neither reinvent, embellish, nor nullify it.

The Act describes itself as both "deregulatory" and "pro-competitive." I believe that it can and must be both. Indeed, the theory of the Act, as evidenced by its various provisions, is that *deregulation*—not *more regulation*—is the best way to promote competition. I believe that we have yet to implement the Act in a way that achieves these twin goals. If we did that—and only that—Congress could spend less time on oversight and reform of the FCC.

This Committee and its Members have invested much in this Act. I hope that you will continue to insist on its full and proper implementation. Such implementation—more than anything else—will bring the agency's processes in better line with Congressional intent and thus ultimately with the democratic process.

Mr. TAUZIN. Thank you.

The Chair is now pleased to welcome the Honorable Michael Powell, Commissioner for the FCC.

#### STATEMENT OF HON. MICHAEL K. POWELL

Mr. POWELL. Thank you, Mr. Chairman, and to the members. I, too, want to commend Chairman Kennard's leadership in developing his Strategic Plan. Its vision is laudable and consistent with the goals of the 1996 act. And I generally support the goals of the plan to make the agency faster, flatter, and more functional, for such actions are critically important to meeting the challenges of a vigorous, innovation-driven marketplace. I am pleased that many

of the areas discussed in our testimony last March are considered in the draft plan, but I believe that the plan alone will not completely obviate the need for Congress to consider the parameters of the Commission in a period of rapid change in the industry.

In the first instance, as we know, Congress sets the Commission's mission. It is our duty to implement specific statutory direction before any discretionary authority. This simple priority principle to me should stand at the summit of any Commission plan.

As to the general goals of the draft plan, I would like to note two particular areas of my role as Defense Commissioner that I believe should be featured as well, flowing from section 1 of the act. In addition to those core functions, we must include protecting public safety and the national security. These statutory objectives continue to be important as the FCC confronts a variety of challenges relating to reconciling commercial and governmental interests which are becoming increasingly difficult in a world of digitalization.

In addition, I would like to express my limited concern that the plan takes a fairly long-term view of our mission and priorities over a 5-year period. What form the communications market will have taken by then is anyone's guess, and one must be a bit skeptical that any restructuring along that time horizon will unfold as planned. While a long-range Strategic Plan has merit and some value in setting our proximate course, it is perhaps going to be more important to work on specific priorities calibrated to shorter timeframes.

The more significant challenge is to transform the vision so well articulated in the plan into daily operations. For example, I continue to believe that the Commission would be well served to enumerate, clearly and widely communicated, a set of priorities on an annual basis. This would help focus the Commission's work for the coming year and create greater regulatory certainty for the marketplace.

I also believe the FCC needs to make quicker, more timely decisions. While automated tools are appropriate for the bulk of the routine non-controversial work that we do, we also need to endeavor to find ways to accelerate decisions involving complex transactions and important policy questions. I am interested in the proposal to consolidate the agency's various functions. However, in light of the current structure of the organic statute itself along technical lines, I do caution us not to expect revolutionary changes in analysis or outcomes of our decision by that simple structure change.

The regulatory objectives of the draft plan, to my mind, fall a bit short. The draft repeatedly remarks that we deregulate as competition develops. Undoubtedly that is true in some quarters, but I also have to express my strong belief that significant deregulation is a prerequisite ingredient for developing competition in many areas and not always just a reward to industry after the government determines competition has emerged to its satisfaction.

I believe that the plan's deregulatory component could be and should be strengthened to more presumptively favor deregulation and place greater burdens on the Commission to justify retaining certain rules.

For the most part, Chairman Kennard's draft Strategic Plan can be executed by the Commission and its most highly regarded staff without congressional intervention. However, the list of modest legislative recommendations attached to the plan could help facilitate its implementation, and I would urge some consideration of them.

Thank you for having me today. It is always an honor and a pleasure and I look forward to your questions.

[The prepared statement of Hon. Michael K. Powell follows:]

PREPARED STATEMENT OF HON. MICHAEL K. POWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Good morning, Mr. Chairman and other distinguished members of the House Subcommittee on Telecommunications, Trade and Consumer Protection. Thank you for inviting me here to discuss "Federal Communications Commission Reform for the New Millennium" and Chairman Kennard's draft "strategic plan."

I will start by stating that I wholeheartedly support Chairman Kennard's efforts and commend his leadership in developing this draft strategic plan. The "vision" that the draft plan has of "vigorous competition that will greatly reduce the need for direct regulation" is laudable and consistent with Congress' intent in drafting the 1996 Act. I, therefore, generally support the goals of the plan and its commitment to make the agency "faster, flatter and more functional."

In my testimony this morning, I would like to highlight for the Subcommittee some of the elements of the draft plan, and, of course, talk briefly about the few areas that may need further consideration by both the Commission and Congress.

In March, when we were last here to testify on FCC reauthorization, I submitted five areas for exploration: (1) the need to more clearly define the Commission's annual priorities and focus; (2) the need to operate efficiently enough to meet the demands of an innovation driven market; (3) how to better align the agency with market trends and demands; (4) whether to continue the administration of functions that are largely duplicated elsewhere in government; and (5) the breadth of the Commission's quasi-legislative authority. I am pleased that many of these areas are considered in the Chairman's draft plan, but I believe that it alone will not completely obviate the need for Congress to monitor and perhaps modify the agency in response to rapid change in the industry and to ensure that Congress' pro-competitive, deregulatory vision, embodied in the 1996 Act, is realized.

I. THE COMMISSION'S MISSION, GOALS AND OBJECTIVES

A must-do for any organization—from the smallest to the largest—is to establish goals and objectives that are measurable and achievable. Congress sets the Commission's mission and goals in the first instance. In my mind, it is our duty to implement specific statutory direction, before, or concomitant with, any discretionary authority. This simple priority principle should stand foursquare at the summit of any Commission plan.

I believe, generally, that the draft strategic plan covers the broad areas that should guide our work in coming years. However, I would point out two areas that I believe are important and derive from Section 1 of the Act, but are omitted in the present draft: (1) the promotion of safety of life and property and (2) the national defense.

As the "Defense Commissioner" responsible for the FCC's emergency preparedness, security and national defense matters, I have asked the Chairman to include up-front in the plan these important statutory goals. These issues are becoming more acute and more challenging as competition and deregulation drive greater commercial activity. While I intensely encourage new entry and applaud innovative business models, these interests do not always coincide with governmental interests in law enforcement and national security. I would alert the Congress to the growing challenge of reconciling these competing interests. Some of these challenges include fulfilling the spectrum needs of federal, state and local public safety entities; ensuring that law enforcement continues to have the necessary tools at its disposal in the digital age; balancing the competing demands for spectrum by governmental and non-governmental institutions, particularly in international forums; and safeguarding critical national security and defense assets.

With an expansive and complex statute it is difficult to compress into one sentence and four enumerated goals the purpose of the FCC "for the 21st Century." I congratulate Chairman Kennard for his attempt to do so. Such an endeavor, however, necessarily produces a document of lofty generalities. The more significant

challenge is to translate this strategic vision into an operational plan, detailing the means for reaching the objectives and the resources for doing so. My only caution here is that it is always more difficult to execute a plan than to craft one, and I have some concerns that the goals in this strategic plan are overly optimistic and some of its numeric targets potentially unhelpful.

I think the Chairman's draft strategic plan includes some appropriate implementation steps and ways to measure our results. He has also put in place a top-notch team of FCC managers and professionals to implement these steps. My limited concern, however, is that the plan takes a fairly long-term view of our mission and priorities (5 years). What form the communications market will have taken by then is anyone's guess, and one must be a bit skeptical that any restructuring along that time horizon will unfold as planned. While a long-range strategic plan has some value in setting an approximate course, it is perhaps more important to work on specific priorities calibrated to shorter timeframes.

For example, as I testified in March, I continue to believe that it would be useful for the Commission to enumerate clearly and widely communicate a set of annual priorities. I would favor a more structured process by which the Commission formally develops and publicly reports its priorities for the upcoming year to help focus the work of the Commission and create greater regulatory certainty. To assist in this and other managerial challenges, I would consider creating a professional management position in the Commission, dedicated to operational matters.

Let me now offer a few observations regarding specific subjects covered in the draft plan.

## II. SOME HIGHLIGHTS OF THE DRAFT STRATEGIC PLAN

### A. Internal Procedures

In the effort to improve internal procedures, we should be centrally focused on drastically improving efficiency. In a market guided by "Internet" time, the FCC needs to make quicker, more timely decisions. This is why I fully support our current and future efforts to modernize and automate many of our functions. The FCC is focused, rightly, on becoming a "model agency for the digital age." I have been very impressed by the various automation efforts, including the spectrum auction bidding system and the Wireless Bureau's "ULS" project. Automated tools are appropriate for the bulk of the routine and non-controversial work. At the same time, however, we need to find ways to accelerate decisions involving complex transactions and important policy questions. Here, more than any other area, a decision that comes too late, might as well not have been made at all.

Therefore, I am encouraged by the draft plan's proposals to eliminate multiple levels of review, making the agency faster, flatter and functional. We must be structured to render decisions quickly, predictably, and without imposing needless costs on industry or consumers through unnecessary delay. In this regard, while I agree with the proposal to act on certain petitions for reconsideration within 60 days of the record closing, I would suggest the same expedited treatment of applications for review of actions taken on delegated authority, as well.

Finally, I am very pleased to see that the Chairman will restructure the Office of the Secretary to facilitate management of Commission proceedings and to ensure Commissioners adhere to timetables and voting procedures. I also anticipate that the Secretary will be instrumental in facilitating the Bureaus' disposal and release of pending matters.

### B. Structural Changes

The Chairman's draft plan clearly recognizes (as almost everyone has) that the Commission is currently organized around industry segments that increasingly are less relevant as convergence strains and eliminates their unique technical distinctions. I generally concur with the Chairman's proposals to reorganize the agency along functional rather than technological lines. I supported the consolidation of dispersed functions into the new Enforcement and Consumer Information Bureaus and I look forward to these new bureaus getting started soon.

I am very intrigued (but not yet sold) by the second phase proposal to consolidate the FCC's policy/rulemaking and authorization of service/licensing functions. A single policy/rulemaking bureau may have some merit. For one, it will increase the field of view of management, hopefully in a way that harmonizes our decisions across industry segments. However, given the depth and breadth of our policy/rulemaking responsibilities, a single bureau overseeing these functions could prove too large and unwieldy. Moreover, because the Communications Act continues to categorize industries based on technology, a consolidated bureau, while appearing functional, may in fact collapse into a "mini FCC" with separate divisions charged with



particular sections of the Act. This subject requires the fullest consideration, but I caution one not to expect revolutionary changes in the analysis or outcomes of our decisions as a consequence of this type of organizational change.

### C. Deregulatory Initiatives

I regret that the deregulatory objectives of the draft plan fall short of my expectations. It seems that one of the core principles articulated in the plan is that we “deregulate as competition develops.” As I have written several times, I am of the view that in many instances, deregulation is a necessary pre-requisite to competition developing. I have often observed a hesitancy to deregulate, under the belief that competition has not yet fully developed or matured. The assumption is that regulation is removed only when it has been rendered superfluous because of competition. In some areas, this may be true. But, this approach fails to recognize the interrelationship between regulations and the development of competitive markets. Regulations often distort market incentives or inhibit efficient entry and competition. Deregulation, then, is not just desert, served after competition comes out of the oven. It is a necessary ingredient to the competition dish.

Although I will not get into the details of the dispute over these core beliefs, I generally see deregulation (whether in the form of forbearance, streamlining or a biennial review) more as a *means* of facilitating competition through the elimination of burdensome regulatory requirements. It is not a reward to hold out to industry, after the *government* determines that there is enough competition to grant relief. I would suggest that the plan’s deregulatory component be beefed up to shift our paradigm for handling forbearance requests and the next biennial review toward a presumption in favor of deregulation and an obligation to re-justify regulations that are retained, with the burden to do so resting with the Commission.

1. *Forbearance*—The draft plan says that the Commission will “consider additional areas that may be appropriate for forbearance,” claiming that we have already engaged in substantial forbearance. I cannot concur with this favorable view of our forbearance record. The true tale is not in the numbers (no matter how well massaged), but how meekly we have wielded the powerful forbearance tool. Yes, we have swatted a few gnats, but very few dragons. I think Congress expected us to be much more aggressive. Indeed, I believe Congress intended that when we are faced with a petition to forbear that we should have to fully justify a decision that leaves the rules on the books. If we cannot, the rule should fall. The burden rests with us.

2. *Biennial Review*—The Biennial Review requirement of Section 11 of the Act, like Section 10, is a very important provision enacted in 1996. I share some of Commissioner Furchtgott-Roth’s concerns about the Commission’s first biennial review and, as I recall, Chairman Kennard responded favorably to Commissioner Furchtgott-Roth’s ideas for the Year 2000 review. I am also very pleased that Chairman Kennard’s draft plan calls for “an aggressive” biennial review next year, citing wireline as an area where competition has clearly emerged and where most regulation has become unnecessary. I can only add to the thoughts of my colleagues on this score by emphasizing that I expect that we will take on the burden of justifying the rules that we keep and to grapple head on with the statutory public interest test of “meaningful economic competition.”

### D. Duplicative Functions

As I testified in March, it is very important to address areas where Commission authority and activities overlap with those of other government agencies. While such governmental overlaps may be desirable, they should at least be complementary (or supplementary) rather than simply duplicative. I am glad that the draft plan provides that we will continue efforts to coordinate with other federal agencies (and with state and local governments) and, especially, to improve coordination with the Federal Trade Commission and the Departments of Justice, Commerce and State to ensure that our respective functions are more complementary. However, some of the FCC’s functions must be thoroughly evaluated in the context of the overlapping duties of other federal agencies and state and local jurisdictions.

1. *Merger Review*—For example, merger review is the topic of several pending bills and of much interest lately as we see a pace of strategic consolidation in telecommunications and media markets like we have never seen before. The FCC’s review of major transactions should be generally limited to those areas in which we can claim primary expertise. While I believe that there is room to preserve a complementary role for the FCC in the review of mergers, we need to have some disciplined procedures and limiting principles to ensure the rapid processing of such transactions, to preserve the rights of the parties and to avoid duplication with other authorities. I have articulated in more detail some of these limiting principles

and have criticized our current process in recent public statements, which I would be pleased to pass on to the Subcommittee.

Chairman Kennard's plan (which is not yet part of the strategic plan) to set up an intra-agency transactions team in the Office of General Counsel may be a promising proposal. I fully support efforts to make the FCC's merger review process more predictable and transparent. But we need more than a new box on the organizational chart. We need much more significant consideration of two areas for revision: (1) we must institute a clearly articulated review process replete with timing benchmarks, and (2) Congress and the Commission need to reevaluate the applicable merger standards to limit duplication and guard against extraneous conditions. I look forward to considering a proposal along these lines.

2. *Other Areas*—Let me briefly address other areas that overlap with other governmental institutions: consumer protection, equal employment opportunities (EEO) and political campaigns. First, one focus of the draft plan is rightly on consumer protection. For, as we have seen in the slamming area, competition tends to bring out of the woodwork those that try to cheat consumers for a fast buck. We must, within our authority, be vigilant in keeping the cheaters at bay. At the same time, we must recognize that there are other agencies and jurisdictions that have similar authority and some judgment might be made as to which is best positioned to administer certain issues.

We must also examine whether all aspects of the Commission's EEO program should remain separate from the Equal Employment Opportunity Commission and the federal, state and local civil rights authorities. Although there is some advantage to having the FCC involved because of its unique relationship with certain industries, in times of tight resources and many other priorities at the FCC, we must ensure that the FCC's and EEOC's respective roles remain complementary and not duplicative. By deferring some aspects of this program to the expert civil rights agency (as the Commission has done in certain respects under memoranda of understanding with the EEOC), we are in better position to justify the government's role in promoting employment opportunities in the dynamic and growing communications industry.

Finally, with an election year soon upon us, the FCC will be facing more pressure to enforce and even expand the political obligations of broadcast licensees. There are unquestionably problems in our electoral system, but I shiver at the suggestion that the *Communications* Commission ought to play a central role in such matters without comprehensive direction from Congress. Unbridled discretion to affect campaigns by three of five unelected regulators is unwise. Moreover, the FCC lacks the knowledge or expertise to properly balance electoral interests or to weigh the effects on existing election law. I would leave that to the Federal *Election* Commission, if anyone.

#### IV. LEGISLATIVE RECOMMENDATIONS

Many of the concerns I have raised, in addition to many other significant issues such as broadband access and inter-LATA data relief, may demand Congress' attention over the coming months. However, I recognize the difficulty of enacting major FCC reform initiatives so soon after passage of the 1996 Act. In the near term, less controversial legislative tweaks that support the Commission's efforts to reform itself and become more efficient may be beneficial.

For the most part, Chairman Kennard's draft strategic plan can be executed by the Commission and its most highly regarded staff without congressional intervention. However, the list of modest legislative recommendations attached to the plan will surely help facilitate its implementation. I generally support them and I will briefly commend the Subcommittee's attention to a couple.

First, the proposal to exempt the Commission from the Government in the Sunshine Act should be considered. I recognize that at first blush, it seems fantastic to support less openness. But the fact is that the Sunshine Act not only has failed in its purpose, it may have had the opposite effect. The notion that substantive decisions are debated by Commissioners in public meetings and voted after such deliberation is fiction. The press of business requires that most items be voted on in circulation. Moreover, even the votes at open meetings are ceremonial, the decision having been debated and determined in advance. The Sunshine Act, in fact, impedes efficient decision-making. Because three Commissioners may not discuss a substantive matter (except at a public forum), questions are filtered through and among layers of Commission staff and then are communicated back and forth to the Commissioners. This produces a lengthy and often chaotic decision-making process. Our decisions certainly should not be cloaked in the shadows, but they are presently being scorched by sunshine.

Second, the Chairman's legislative proposals that would provide flexibility to restructure our operations also deserve attention. For example, "voluntary separation incentives" or employee "buyouts" would facilitate further staff downsizing and redeployment, to be more responsive to the ongoing industry convergence and more conducive to a functional organizational structure. Additional flexibility to hire outside experts and consultants would allow the Commission to attract talented experts to augment our current staff's expertise.

Third, I favor the Chairman's proposals to strengthen our enforcement assets, including those that toughen penalties for violation of the Communications Act and FCC rules and that provide for speedier judicial review of Commission forfeiture orders.

#### V. CONCLUSION

I look forward to continuing to work with Members of Congress and with my colleagues on the many challenges ahead. I trust that, by working collaboratively and by having faith in free markets, we will bring the benefits of competition, choice, and service to American consumers as envisioned by the 1996 Act.

Thank you for your attention.

Mr. TAUZIN. Thank you commissioner Powell.

Finally, but certainly not least, Commissioner Gloria Tristani for an opening statement.

#### STATEMENT OF HON. GLORIA TRISTANI

Ms. TRISTANI. Thank you, Mr. Chairman. I am delighted to be here.

I generally support the draft Strategic Plan released by Chairman Kennard last August. It is a thoughtful and forward-looking proposal that provides a good road map for preparing the FCC for the new millennium.

I won't repeat the specific points made in the Chairman's report, but I would emphasize one particular issue and make a couple of points of my own.

First, I completely agree with the Chairman that consumer protection should remain one of the Commission's core functions. In particular, I agree that we should have a zero-tolerance policy for perpetrators of consumer fraud such as slamming. The problem of slamming is rampant and it is the FCC's job to stop it.

I would also like to join the comments of my fellow commissioner, Susan Ness, in saying that we need to have more consumer input in our decisions. Consumer voices are very rarely heard at the Commission.

Second, while I fully support the goals and key policy initiatives set forth in the chairman's report, I am not convinced that some of the 5-year goals described in the report are achievable. For instance, I am not convinced that despite our best efforts we will be able to increase market penetration for basic telephony service in rural and underserved areas to 94 percent in 5 years, or that in that timeframe advanced services will be available to 90 percent of American homes.

Finally, as we move into the new millennium, I would emphasize the Commission's continuing statutory role in ensuring that the public airwaves are used in the public interest. For far too long, the FCC has permitted the public interest standard to lapse into a vague, undefined, and therefore unenforced, standard. I believe it is time for the Commission to rectify that by defining and enforcing meaningful public interest obligations. Again I am delighted to be here and I look forward to your questions.

[The prepared statement of Hon. Gloria Tristani follows:]

PREPARED STATEMENT OF HON. GLORIA TRISTANI, COMMISSIONER, FEDERAL  
COMMUNICATIONS COMMISSION

I'm pleased to be here today to discuss the structure and mission of the Federal Communications Commission as we move into the 21st century.

I generally support the Draft Strategic Plan released by Chairman William Kennard last August. It is a thoughtful and forward-looking proposal that provides a good road map for preparing the FCC for the new Millennium. As Chairman Kennard's Report proposes, the FCC can and should: (1) create a model agency for the digital age; (2) promote competition in all communications markets; (3) promote opportunities for all Americans to benefit from the communications revolution; and (4) manage the electromagnetic spectrum (the nation's airwaves) in the public interest.

I won't repeat the specific points made in the Chairman's Report. But I would emphasize one particular issue and make a couple points of my own.

First, I completely agree with the Chairman that consumer protection should remain one of the Commission's core functions. In particular, I agree that we should have a zero tolerance policy for perpetrators of consumer fraud, such as slamming. The problem of slamming is rampant, and it is the FCC's job to stop it. Last December, we promulgated new anti-slamming rules that, in concert with our aggressive enforcement actions against slammers, would drastically reduce the frequency of slamming. Unfortunately, the FCC's anti-slamming rules have been stayed by the courts. The sooner meaningful anti-slamming rules become effective, the sooner we can begin moving toward the Chairman's aggressive goals for reducing slamming complaints over the next five years.

Second, while I fully support the goals and key policy initiatives set forth in the Chairman's Report, I am not convinced that some of the five-year goals described in the Report are achievable. For instance, I agree that we must increase market penetration rates for basic telephony service in rural and under-served areas (currently under 50 percent). But I am not convinced that, despite our best efforts, we will be able to bring those numbers up to the national average of 94 percent in five years. In my opinion, a more realistic number would be something on the order of 75 percent. Similarly, given the current pace of deployment, I am not convinced that advanced services will be available to 90 percent of American homes in five years. I am especially concerned about the current pace of deployment in rural and other hard-to-serve areas.

Finally, as we move into the new Millennium, I would emphasize the Commission's continuing statutory role in ensuring that the public airwaves are used in the public interest. I do not believe that this is simply a question of whether the airwaves are being used efficiently, but whether they are being used in a manner that benefits the public. For too long, the FCC has permitted the public interest standard to lapse into a vague, undefined—and therefore unenforced—standard. I believe it is time for the Commission to rectify that. We ought to define and enforce specific, meaningful obligations that licensees must meet, especially as we move into the digital world. Or if such obligations do not exist, we should say so. Licensees deserve to know the standards to which they will be held accountable, and the American public deserves to know the benefits it is entitled to expect for the use of its spectrum.

Mr. TAUZIN. Thank you very much, Ms. Tristani.

Let me recognize members now for a round of questions, and the Chair would start by recognizing himself.

First of all, Mr. Chairman, you all mentioned speed matters. The technology that the FCC oversees is moving at an incredible pace, and yet what we see at the FCC is if you are given 180 days to do something you take 180 days.

Mr. Powell, you mentioned the concern for that. I want to hit on that a little harder. If there is a time limit provided in the statutes, the FCC takes it all. If there is no time limit in the statute, there is even greater concern about how long it takes to process matters. For example, there is no time limit at all on license transfers, and therefore merger reviews under the Commission are timeless. They could go on forever.

One of the big concerns we have is that if speed matters in this world of high technology, what is the Commission going to do in its plans to shorten the time for all these reviews and considerations of applications that come before the Commission?

Mr. KENNARD. It is a very good question. As I stated earlier, when we convene all our stakeholders, this is an issue that continually comes up. In the plan there are a number of ways that we seek to address it. One is we are imposing some deadlines on ourselves for petitions for reconsideration, applications for review, some of the more routine pleadings that come before us. One of the things, however, that we have to be cognizant of is the due process rights of people who come before us. We are subject to the Administrative Procedure Act and we have to make sure that everybody has an opportunity to be heard.

Mr. TAUZIN. Can I jump in here for a second? One of the things that has been pointed out to me that kind of surprised me, I didn't realize it was true, that only two of you can talk to each other at a time.

Mr. KENNARD. Yes.

Mr. TAUZIN. The law prohibits you to communicate as we communicate with each other in the legislative process, to seek counsel of one another and to come to a consensus. You are unable to do that so you have to rely upon staff to go through all this stuff and to bring your recommendation. By the time you get it, it is pretty well cooked, isn't it?

Mr. KENNARD. That is exactly right. That is because, of course, the Government in the Sunshine Act. It was a very well-intentioned piece of legislation; but unfortunately, the unintended consequence is that we have difficulty communicating, and it makes for a game of telephone at the FCC when we are communicating—

Mr. TAUZIN. One to one.

Mr. KENNARD. Exactly.

Mr. TAUZIN. Another good example is I have been fascinated recently, I have even talked to one of the inventors of the ultra-wide-band technology. One of your colleagues has called for a rule-making. It has been 9 years that the Commission has been considering regulatory approval also of different applications of this technology. And it is amazing. If it is real, it is amazing in terms of its ability to see persons, buildings, to provide rescue, earthquakes, land mine protection, safety at airports. I can go on and on and on about all the incredible benefits of that technology if it is real, and yet it is 9 years and we haven't had a rulemaking on it. I think you get my gist.

It is pretty frustrating when that is a result of maybe the inhibitions of the agency's capacity to talk to one another and to collaborate and maybe move some of these things forward. If speed matters in this technology, it could be critically important in solving many of the last-mile problems of broadband communications. For example, why would we not want to have a rulemaking on it and get moving on it and literally short-circuit a 9-year process? Mr. Kennard?

Mr. KENNARD. I couldn't agree with you more. One of the things that we have to recognize is that the FCC is an under-resourced,

overworked agency. Ultra-wideband is a good example. We have just a limited number of quality engineers that we can throw at a problem like that.

Mr. TAUZIN. Let me see if I can save you some time then. What did the repeal of section 221(a) of the 1934 act mean to you guys and gals? Section 221(a) was the authority route to review mergers. In 1996 Congress repealed, specifically repealed, the legislative authority to review mergers. A lot of your time is spent reviewing mergers. What did that repeal mean to you, and did it mean nothing?

Mr. KENNARD. I would like to address that question specifically and the overall question of mergers. One is, Congress didn't repeal the responsibility of the agency to ensure that license transfers are only granted if they serve the public interest. We have experienced in the last 3½ years since the act was passed an unprecedented wave of mergers and consolidation in this industry. We have never seen anything like it in every single sector of the communications industry. So you can imagine the kind of strain it puts on the agency.

Now, notwithstanding that strain, I am proud to say that we have been able to grant most of these license transfers and assignments in very quick fashion. In fact, the overwhelming majority of license transfers that come before the FCC are handled in less than 6 months.

Mr. TAUZIN. My time is expired. I will let you comment a lot more on it and perhaps submit something in writing. But before I yield, let me just ask you if any one of you want to respond to the question I asked. What was the meaning at the Commission in the way you viewed what we do, how I talked about the relationship of Congress and the agency created by Congress to carry out our policy, what was the meaning of Congress repealing the specific authority that allowed you to review mergers? If it had no meaning, tell me that. If you think it had some meaning, what was it? Anyone?

Mr. KENNARD. Again, I would just reiterate that we have a statutory obligation to review license transfers to make sure they serve the public interest.

Mr. TAUZIN. I heard that. I am asking you what do you think Congress meant when they repealed that section? Did it have no meaning at all? Were you ignoring it because you thought you had authority in other areas to review mergers? Did it have no meaning? Was there no message in that repeal? Why did we do it if it was meaningless is what I am asking. Why would you think it meant nothing, if you are the agency commissioned by Congress to carry out legislative policy?

Mr. KENNARD. Perhaps from your perspective, it didn't go far enough.

Mr. TAUZIN. It didn't go past this diocese, apparently, is what I am concerned about. Nobody heard it. Nobody read it as meaningful.

Ms. NESS. My recollection—and I may be thinking of a different change in the statute—but my recollection was that this eliminated the preclusive effect of the Commission electing to exercise its merger authority; under the old law, the Commission's action pre-

cluded DOJ or the FTC from exercising its authority to review mergers involving Bell operating companies. Again, I may be wrong, I may be focused on a different section—but I believe that is what the change in the statute did.

Mr. TAUZIN. My information is specifically repeal the authority to review mergers. I would love if you—I need to pass it over—if you would give it some thought and come back to us in writing as to what at all that repeal meant to you, and that will give us an idea of how we legislate and how you receive our legislation for the future as we go through this reform effort.

[The following was received for the record:]

THE EFFECT OF THE REPEAL OF SECTION 221(A)

Section 221(a) of the Communications Act provided for Commission hearings when telephone companies sought permission to consolidate, acquire, or transfer control over their properties. If the Commission determined that the proposed transaction was in the public interest, antitrust scrutiny was precluded.

In the Telecommunications Act of 1996, Congress eliminated section 221(a) as part of an “antitrust savings clause” for the express purpose of permitting antitrust review of telephone company mergers.

The Congress, however, did not eliminate or modify Commission review of telephone company mergers under the Communications Act. To the contrary, the Conference Report on the Telecommunications Act of 1996 expressly noted that:

**“[This] repeal would not affect the Commission’s ability to conduct any review of a merger for Communications Act purposes, e.g., transfer of licenses. Rather, it would simply end the Commission’s ability to confer antitrust immunity.”** Conference Report, at 201. (Emphasis added.)

Mr. TAUZIN. Let me yield to the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. I am glad you took some extra time because it is always instructive to hear you press your questions, so I look forward to the answer from the Commission.

I have two questions, the first of Chairman Kennard, and the area of any of the Commissioners. And I want to get the questions out because usually if you do them one at a time, you only get an answer to the first question and run out of time on the second.

Chairman Kennard, in your statement you mentioned that the FCC needs to recognize itself along a functional rather than technological basis. I think you are saying that the current FCC bureau’s cable common carrier, may not apply to the emerging telecommunications field, especially with cable operators who are now offering telephone services and telephone companies who are offering cable services and all of them offering Internet service.

What structure do you envision for the FCC and what sign posts will you employ to guide you in making these structural changes? Maybe to rephrase my question, when will you know the time is right to overhaul the current regulatory structure at the FCC? So that is my question of you.

Let me get this other one in for any of the Commissioners. Many of us have heard from a number of the new entrants in the telecommunications field about the many intercarrier disputes they continue to have. Chairman Kennard mentioned that the new Enforcement Bureau will be functional in November. Do you believe that a definite timeframe for FCC review of these disputes should be implemented? We will start with Chairman Kennard.

Mr. KENNARD. Thank you. You raised an issue that really goes to the heart of our Strategic Plan for the future. That is, it is really being thrust upon us because of the convergence in the industries with which we deal. What we have attempted to do is lay out a blueprint for reorganizing the FCC along functional lines, because we are finding that the traditional bureau structure has severe limitations.

That being said, though, we have to recognize that the act itself is still organized for the most part along industry lines. You have title II dealing with the telephone industry; title VI, cable; title III, broadcast. And so we are in effect trying to reorganize in some senses ahead of our statutory authority. Commissioner Powell has made some interesting observations about that in the past.

Nevertheless, I think we have to charge ahead, because the industry is changing. Convergence is happening. We have laid out a plan for reorganizing along functional lines here in our Strategic Plan. We took the first major steps with the inauguration of these two new functional bureaus, Enforcement and Consumer Information. The plan calls for completing our reorganization over a period of time so that by, I believe, January 2003, we hope to have completed this functional reorganization.

I think it is important, though, to address the concerns of some who have asked why is it going to take you so long to make this happen? I think we all need to be aware of the cost of restructuring an agency like the FCC, a small, under-resourced agency, when we are being bombarded every day with mergers and petitions and court appeals. We have to have sensitivity to our employees.

If we were to reorganize the agency completely structurally overnight, I am afraid that the place would grind to a dead halt. So I think that what we have here is a Strategic Plan that is reasonable and that lays out this restructuring over time.

Ms. ESHOO. Do you have timeframes around the functions?

Mr. KENNARD. Yes. They are outlined—in the plan. We indicate when we are going to take the next steps. The next step will be to preview the creation of a Video Competition Bureau which would merge our Mass Media Bureau with our Cable Bureau.

Ms. ESHOO. Great. Thank you.

My second question, to any of the Commissioners?

Mr. FURCHTGOTT-ROTH. Ms. Eshoo, I will be happy to respond to your second question. Many CLECs do have many disputes with incumbent local exchange carriers. Most of those disputes take place under section 252 and State jurisdiction. They are not necessarily FCC jurisdiction.

There are some disputes under section 251, and I think one thing that Chairman Kennard's leadership has brought us very well is the "rocket docket" to provide for expedited review of certain disputes. This was an experiment that we started, oh, goodness, 9, 10 months ago, and I think it has been fairly successful so far.

Ms. ESHOO. I am not so sure I understand your answer.

I know I don't understand your answer. What I was asking was, given what I described, do any of the Commissioners believe that there is a definite timeframe for FCC review of the disputes, if that should be implemented, a definite timeframe around the disputes?



And I don't think that was addressed in your answer. If it was, I missed it.

Mr. FURCHTGOTT-ROTH. Ms. Eshoo.

Ms. ESHOO. Maybe it just can't be answered. Maybe you don't know yet. If that is the case, then maybe that is what should be said.

Mr. FURCHTGOTT-ROTH. Ms. Eshoo, I am happy to try again.

Ms. ESHOO. Good.

Mr. FURCHTGOTT-ROTH. The point I was making is that most of the disputes between CLECs and incumbent local exchange carriers are not under Federal jurisdiction. They are under State jurisdiction.

Ms. ESHOO. And the others, what about the others?

Mr. FURCHTGOTT-ROTH. We have implemented something that is popularly referred to as the "rocket docket," that is an expedited review process for these types of complaints.

Ms. ESHOO. So there is—you are saying that there is a good timeframe around it because they are expedited expeditiously?

Mr. FURCHTGOTT-ROTH. For some of the disputes, it requires the agreement of the parties. I won't say that they are all being handled that way, and I am sure there are some that are probably taking a lot longer than they should.

Ms. ESHOO. Thank you. Anyone want to add anything to that? No? Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentlewoman.

The Chair recognizes the vice chairman of the committee, Mr. Oxley. With the indulgence of members, Mr. Oxley has to sub for the chairman of the O&I hearing, and with your concurrence, Mr. Oxley is recognized.

Mr. OXLEY. I thank you, Mr. Chairman.

Let me begin by asking about this Satellite Home Viewer Act. All of you know this is in conference and we are getting close, hopefully, to an agreement.

One of the issues that remains to be resolved is whether Congress should direct the FCC to modernize the signal reception standard, which has been in effect since 1952, and at least in my estimation doesn't meet consumers' expectations today as to what is really an effective picture. I also recognize that Congress must be careful not to jeopardize free, over-the-air broadcasting.

Mr. Chairman, if Congress were to authorize the FCC to modernize its signal reception standard, are you confident you could devise a standard that satisfies consumers' expectations while also ensuring that localism will continue?

Mr. KENNARD. I think we could. I think that the FCC took a stab at this before Congress passed legislation when we tried to update our definition of the grade B signal contour for television stations, to try to deal with this very difficult problem that consumers face with the advent of the satellite industry.

Obviously, if you pass legislation and direct us to take another stab at it in the context of a new and updated Satellite Home Viewer Act, we will do the best we can. I am not an engineer so I can't definitively say what the outcomes would be, but I commend you for taking on this issue legislatively, and we will certainly do everything we can to make it successful.

Mr. OXLEY. I appreciate it. Surely, the technology has got to be better today than it was in 1952 in virtually every area, and I would think that that would be most helpful.

Let me turn my next attention to the WorldCom/MCI merger, which was approved in September 1998. And I supported that merger, and I think many members of the committee did as well, and the Commission found that it was not likely to lead to anti-competitive effects.

Was part of the assumption of approving that merger, at least the public interest aspect that you had jurisdiction over, was that based on the fact that the Bell companies would soon enter the long distance market and compete in the long distance area?

Mr. KENNARD. We certainly looked at that issue. I don't think that that was dispositive of our decision in that case. When we evaluated the MCI/WorldCom transaction, we looked at the various markets that those companies were engaged in, consumer long distance, the Internet backbone, and evaluated each of those market segments to see whether that particular transaction would serve the public interest, and we were able to conclude that it would.

Mr. OXLEY. Do any of the other Commissioners have any comments on that?

Mr. FURCHTGOTT-ROTH. Mr. Oxley, if I might.

Mr. OXLEY. Yes.

Mr. FURCHTGOTT-ROTH. I think some of this goes to Chairman Tauzin's question about the merger review itself. The issue involved in the WorldCom/MCI before the Commission was not a review of a merger. It was simply the transfer of licenses, and my personal view of that is that it in no way implicated issues outside the license transfer and therefore it in no way implicated other matters before the Commission, such as you just described.

Mr. OXLEY. So the issue of future competition really was probably a role for the Justice Department as opposed to the FCC; is that correct?

Mr. FURCHTGOTT-ROTH. The specific question you raised about whether RBOC entry into long distance—it certainly did not affect my judgment on that particular set of license transfers.

Mr. OXLEY. Thank you.

Commissioner Powell, in the recent proceeding on cable ownership limits, the Commission provided some relief on attribution rules but failed to raise the ownership limit above 30 percent for video subscribers. I am perplexed. Given the trend toward convergence, it makes no sense to have a 30 percent cap for cable, 35 percent for broadcasters and none whatsoever for telcom. Shouldn't these caps be harmonized or, better yet, abolished in favor of simple reliance on the antitrust laws?

Mr. POWELL. I personally absolutely agree that there is a severe need for government to try to harmonize its perspectives on structural caps and competitive policy, but what gets complicated is that the caps or the structural limitations like that derive from different provisions with different objectives.

When one reads the statutory history and the text from which the cable horizontal structure limitation applies, you are struck by the degree to which the legislative history emphasizes not competitive structural principles but principles such as diversity and pro-

gram access markets, which arguably can be limits substantially lower than antitrust or competitive policy would suggest.

The numbers—the amount of concentration that results at that level in a number of markets is relatively modest or minor from a competitive structural perspective; but when you introduce additional notions which are more visceral and vague, like a congressional interest in diversity, which may be valuable, and want a prophylactic bright line number to be associated with it, it tends to drive the structural cap lower than it otherwise might be. In other contexts, we are not necessarily constrained by those additional legislative considerations and there tend to be compromises that result in different caps.

Do I think it is defensible? On a going-forward basis, it is going to be very difficult to maintain because you are biasing particular business models and technologies. You are saying that if you use this service, this type of technology for convergent services, and you happen to have a little of this, you are more constrained than another competitor who is using a different infrastructure and different model, and I think that we will have a great deal of difficulty with that on a going-forward basis.

Mr. OXLEY. Thank you.

Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman.

The gentleman from Ohio, Mr. Sawyer, is recognized.

Mr. SAWYER. Thank you, Mr. Chairman.

Let me return to the question that our chairman had posed to the Commission chairman regarding merger reviews. Am I correct in understanding the line of response that you had begun to go down was that while you understood the difference between what was suggested in the 1996 act in terms of merger review, that the whole business of license transfer remains an active part of your responsibility. And, although it may look like a merger review because it is inherently a part of the activity that is in itself a merger, that you are nonetheless not discharged from that responsibility to oversee questions of license transfer which are an inherent part of that? Is that correct? Am I correct in saying that?

Mr. KENNARD. Yes, that is very well said. We have an obligation to make sure that every one of these license transfers serves the public interest. It would be foolish, in my view, when you have an industry that is completely restructuring, that we would completely ignore the public interest impact of these transactions on consumers, the rates that they pay, their ability to get access to competing programming sources. I mean, that is a bedrock, fundamental responsibility under the Communications Act. It always has been since 1934.

That did not change in 1996. We still have that obligation. When I travel around the country and talk to consumers, they are concerned about consolidation in these markets. They want to know what the FCC is doing. So we have invoked our public interest authority under the act to make sure that they are protected in the context of these mergers.

Mr. SAWYER. In your original answer you began to go in a direction that was not the focus that the chairman wanted to put on his particular question but it was of interest to me, and that was with

regard to the typical time lines that license transfer reviews entail. You were starting to say that typically it takes 6 months or less. Could you talk a little further about the direction you were beginning to go and then talk about the exceptions to that and the reasons for those exceptional cases?

Mr. KENNARD. Certainly.

Mr. SAWYER. Mr. Chairman, let me mention also that I don't think my light was turned on when I began my questioning. Thank you.

Mr. TAUZIN. The gentlemen is correct. The Chair is adjusting accordingly.

Mr. SAWYER. I appreciate it. Thank you.

Mr. KENNARD. Thank you, Congressman.

In the overwhelming number of cases, these transactions are approved or disposed of by the FCC within 6 months. We take longer when we have a merger involving very complex issues of market structure. We have to recognize that in the wake of the 1996 act, we are being presented with transactions that were not possible before, and they are involving a complete restructuring of this industry, and they are presenting novel questions of first impression at the agency. That requires oftentimes that we take more time.

Now, one of the things that we are attempting to do is, as we get more experience with these large transactions, to give the public a better sense of certainty about timing. That is why I announced about a month ago that we are going to charge our General Counsel's Office with coming up with a merger review team which will coordinate the efforts of the various bureaus.

Mr. SAWYER. I assume you mean the license transfer team?

Mr. KENNARD. Yes, a license transfer team, correct.

And the General Counsel will be charged with coordinating these license transfer reviews to make sure that the public has some sense of certainty about the timing and about when they can expect a decision and what the role of public input will be.

Mr. SAWYER. Let me ask you just one further question. In a time of continuing convergence, can you talk just briefly about how you intend to define functional distinctions?

Mr. KENNARD. Well, we are, of course, guided first and foremost by the act, and the 1996 act went a long way in providing the Commission specific statutory definitions for various services. And we are finding that as the market charges on and as technology changes, some of those definitions are being challenged.

Mr. SAWYER. Yes.

Mr. KENNARD. And so we are continually trying to fit new services into various definitions and that is really the challenge of convergence, particularly when you have different services regulated in a different way because of the definitions under the act. We hope that a more functional approach at the FCC will at least ensure that people in the agency are communicating better and the public has a better sense of what to expect.

Mr. SAWYER. Mr. Chairman, I suspect I have used my 5 minutes and appreciate your flexibility with that regard. Thank you.

Mr. TAUZIN. I thank the gentleman. The Chair now recognizes the gentleman, Mr. Gillmor, for a round of questions.

Mr. GILLMOR. Thank you very much, Mr. Chairman.

Commissioner Ness mentioned, so I guess I would direct this to her as well as the Chairman, about working with regulatory agencies in other countries. And my question is, from your experience, are there any other countries you think might be worth emulating that are doing things better or right?

Ms. NESS. There are a number of countries that have engaged in innovative approaches based on their own regulatory structures. For example, we have had very recent meetings with OFTEL, regulatory commission of the United Kingdom, and have found some of the solutions that they have been grappling with to be particularly helpful.

Many other countries are looking to us for our experience with unbundling. For example, the European Union is trying to work with its member States to encourage greater competition within the member States, and one of the issues that it has been addressing is the unbundling issue. We tend to approach things a little bit differently.

We are looking at instituting "calling party pays" here in the United States. That is something that has been generally implemented in Europe, and is the basis for the wireless system in Europe. It seems to be working pretty well there and in South America. So we are talking with our colleagues to get their ideas and to share our experiences with them.

Mr. GILLMOR. But there is nobody where we would look at them and say, hey, they are doing it right, we ought to try to do it that way, in your opinion?

Ms. NESS. There were——

Mr. GILLMOR. Or maybe they are over there looking and saying, boy, we ought to do it. The FCC does it.

Ms. NESS. Often they look to the U.S. as a model. It depends on how complex a system they want. For example, we have the fortune of having oversight authority over not just telecommunications but also broadcasting, and a number of countries are examining that structure because of convergence issues. So we tend to be a little bit further along than many of the other countries, who are first grappling with privatizing a telecommunications company that was government-owned. But there are some new ideas; different approaches where we may very well share ideas and benefit from their experience.

New Zealand is one country that has adopted a much more deregulatory structure. It is certainly a much smaller country, a lot less complex, and it has found that it keeps having to threaten to regulate in order to achieve some of the reforms that it was hoping to achieve.

Mr. GILLMOR. Has my time expired, Mr. Chairman, or did you forget to push the button?

Mr. TAUZIN. The gentleman's time has almost expired. The gentleman may proceed.

Mr. GILLMOR. All right. Let me just ask you a quick question. It has been reported that Office of Personnel Management rules preclude effective utilization of staff. Has that realistically been a problem?

Mr. KENNARD. What rules? I am sorry, Congressman Gillmor. I didn't get the question.

Mr. GILLMOR. Office of Personnel Management rules, that that has caused a problem in the effective utilization of employees. Has that been a problem?

Mr. KENNARD. Well, I think that anyone managing a government agency doesn't have the tools that people in the private sector have, and that is a function of OPM and the Civil Service rules. We can't give the same incentives. We can't pay people the same amount. We can't fire people as easily. So, sure, it is a constraint.

I mean, one thing that would be very helpful is if we could get buyout authority from Congress, because one of the things that we are attempting to do in order to implement this plan is to redeploy our resources so they are more relevant to what is happening in the marketplace. It would be very, very helpful if Congress would give us authority to be able to buy out some employees that don't have necessarily the skills that we need to facilitate competition in this new environment.

Mr. GILLMOR. Thank you.

Thank you, Mr. Chairman.

Mr. TAUZIN. The Chair thanks the gentleman and the Chair now recognizes the gentlewoman, Ms. Cubin, for a round of questions.

Mrs. CUBIN. Thank you, Mr. Chairman.

The first question I want to ask is of Chairman Kennard. I have not seen the text of last week's order on universal service, but I understand that Wyoming will receive an incremental \$3 million in high-cost support. I wondered what specific requirements will be included in the Commission's order to ensure that this incremental support flows to Wyoming's ratepayers.

Mr. KENNARD. Well, the order that we adopted last week, does provide authority for the State regulators to certify how that additional support is going to be used, and we insist that any additional support must be used to serve universal service needs of the State. So we will rely in the first instance on our colleagues at the Wyoming State level to make sure that that money is used appropriately.

Mrs. CUBIN. Thank you.

Commissioner Furchtgott-Roth, the FCC voted 4-to-1 to approve this new way of determining universal service subsidies for large- and medium-sized phone companies, and you voted against the plan so obviously you don't believe it is the best way to determine subsidies. I just wondered why not, and what do you think would be the best way?

Mr. FURCHTGOTT-ROTH. Mrs. Cubin, I have spoken about this often. I have written quite a bit about it. The Commission has adopted an extraordinarily complex cost model to allocate funds for universal service. My background is as an economist. I have worked with cost models during much of my professional career. This is one of the most complicated, if not the most complicated, cost model I have seen used in government. It is built—it has taken some time to build and it is supposed to be reflecting a technology that is changing far more rapidly than our capacity to imitate.

I am troubled by the complexity. It is a model that changes very quickly. It is something that is not transparent and obvious to consumers. It is very difficult to explain to the people of Wyoming ex-

actly why they are getting this amount of money as opposed to some other amount of money.

I would have preferred a much simpler approach; rough justice, if you will. But I think it is better to be approximately right than exactly wrong, and I think that this model is exactly wrong.

Mrs. CUBIN. Thank you.

This question or statement, or whatever, I would like anyone who feels like they would like to respond to it to respond to it. The recent explosion of mergers in the telecommunications industry obviously has had a major impact on competition and economic development, not only in Wyoming but all across the Nation. I am a co-sponsor of Chip Pickering's legislation which has been introduced to establish time limits for FCC review of mergers and acquisitions, because, you know, we all are very concerned about the timeframe in approving these.

And here is something that happens that I would like you to respond to, because you as a Commission hold up approving mergers based on, quote/unquote, an agreement with the companies that are merging, and that might be—you have to increase your prices. In the case of television, it hasn't been increasing the programs. But I guess the point I am trying to make is that you leverage certain policies based on approving mergers. And so what gives you the authority to do that?

I mean, shouldn't Congress be the one that makes that decision, or those policy decisions? I mean, they might be very good policies or they might not be good, depending on how you look at the issue, but nonetheless shouldn't those sort of things be up to the Congress?

Mr. KENNARD. They absolutely should be up to the Congress, and when we look at these transactions I believe it is our responsibility to fulfill our mandate from Congress to ensure that they serve the public interest. Now, that means ensuring that no merger can be approved if it would undermine the fundamental goals of the 1996 act.

So most of the inquiries that we undertake when we look at these transactions have to do with ensuring that this consolidation is not going to undermine your fundamental goals to bring competition to the marketplace.

Mrs. CUBIN. Well, it seems to me that the FCC is using your authority over the mergers and license transfers in a way that achieves your own policy objectives. Like another chairman might choose to use as leverage for different objectives, like I said, the example of increasing the payments. I know you are saying it is for the public good, but when it comes to a policy question like that, that is your opinion of the public good and the Congress should be setting that policy.

Mr. KENNARD. Well, what we typically do, Mrs. Cubin, is make sure that when we evaluate these transactions they are not undermining what we believe are the goals of the 1996 act. In delegating to the Commission authority to review these transactions, we have to use our best judgment as to how they would further the congressional goals, and we typically do this consistent with the act and the Administrative Procedure Act, which requires that we develop a record. We certainly don't do this in a vacuum. We often hold

public hearings. We develop records. We hear from everyone who has an interest in these particular transactions, and we hear often-times from many, many Members of Congress.

So I really view our role as one of pulling together all of this information and making our best judgment as to how the public interest will be served.

Mrs. CUBIN. Well, I knew that is what you would say but I think we need to just talk about it. I will give you a call.

Mr. KENNARD. Love to.

Mrs. CUBIN. Thank you.

Mr. TAUZIN. The Chair thanks the gentlewoman.

The gentleman, Mr. Stearns, is recognized for a round of questions.

Mr. STEARNS. Thank you, Mr. Chairman. I just ask unanimous consent to make my opening statement a part of the record. I didn't get it in.

Chairman Kennard, welcome. The question I have is under your "Promote Opportunities for Americans to Benefit from the Communications Revolution," you state that the 5-year performance measure goal is to have 100 percent of our schools and libraries connected to the Internet. And I guess my question is, is it fair to assume that once 100 percent of the schools and libraries are wired to the Internet and the E-rate program has fulfilled the objectives of providing universal service under the section, will it be sunsetted then?

Mr. KENNARD. I think the funding requirements will certainly change. The E-rate is administered pursuant to Section 254 of the 1996 act. So we would not have unilateral authority to sunset it, but we certainly are setting the funding levels for that program to accord with demand. So I would expect that once we get the schools and libraries wired, then the funding requirements would change. There would be, for example, many fewer requirements for money for internal connections to wire the schools. There would be some residual needs to maintain the system and also to provide the capacity, because that is funded from the discount matrix, but I think the funding requirements would certainly change.

Mr. STEARNS. Commissioner Furchtgott-Roth, your comments. I think the question is many Members of Congress would just like to see if this thing is going to be sunsetted or is this going to ultimately just continue on and on?

Mr. FURCHTGOTT-ROTH. Mr. Stearns, as you know, I have written about this extensively. I have grave doubts about the legal underpinnings of the program as it is currently constituted. I think the chairman is quite right that the demand might change once there is 100 percent. But let me point out that a teeny, tiny, insignificant portion of the funding right now goes for what could conceivably be called really internal wiring. Most of the money right now goes for very complicated, sophisticated computer equipment, and I don't know whether the demand for that will ever go away.

Mr. STEARNS. Is this complicated computer equipment at the libraries, or where is it?

Mr. FURCHTGOTT-ROTH. Oh, anywhere you can put it, Mr. Stearns.



Mr. STEARNS. I think what you are saying is this money is not going for the library and schools but it is going for more sophisticated equipment elsewhere?

Mr. FURCHTGOTT-ROTH. Well, the computer equipment, let me be clear, probably is physically located in the libraries and the schools, but the point is that even once there is 100 percent connectivity to the Internet—

Mr. STEARNS. You will still need this?

Mr. FURCHTGOTT-ROTH. [continuing] people may still want to upgrade.

I have asked, I am not sure whether I have gotten a clear answer, whether schools that receive a lot of money for routers and servers in the first year, whether or not some of the funding in the second year is for similar equipment. I don't know at this point.

Mr. STEARNS. Are you saying that you think that not only would it not be sunsetted but this clearly could—the money, it would just be an ongoing government spending program and we see another, what people call entitlement, which I generally like to use as government spending?

I mean, from what you are saying, it seems like this will be an ongoing government spending program. Is that your honest appraisal of what we have here?

Mr. FURCHTGOTT-ROTH. That is one possible outcome.

Mr. STEARNS. Okay.

Mr. KENNARD. Would you allow me to clarify the record on one point?

Mr. STEARNS. Sure. Yes, sir.

Mr. KENNARD. I just wanted to make clear that E-rate funding does not go for certain hardware in schools. It doesn't go to pay for actual PCs or software, the computer hardware. The computer equipment that I believe Commissioner Furchtgott-Roth was referring to were the routers and servers.

Mr. STEARNS. The servers and routers, I understand.

Mr. KENNARD. That equipment.

Mr. STEARNS. But after you do that, it should be done. It shouldn't be continuing to go on and on, because you can make the argument that, well, these routers and servers are obsolete after 5 years or 2 years, and we have to get new ones, and pretty soon this little program, well intended, is going to cost more and more and go on indefinitely. I think the FCC should try and make a commitment to sunset this program somehow because you are taking taxpayers' money to do it.

Mr. KENNARD. Well, again, we don't have unilateral authority to sunset it. A lot of the expenses that are being incurred today do go for the inside wiring piece of the program. It is not an insignificant amount of money. As I recall, it is 40 or 50 percent of the funding requirements.

Mr. STEARNS. Commissioner Furchtgott-Roth, would you like to comment on that?

Mr. FURCHTGOTT-ROTH. Mr. Chairman, with all due respect, I believe that the categories that the Commission has adopted make it appear that it is for internal connections, but if you go and look behind what is actually under internal connections it is primarily computer equipment such as routers and servers.

If you look at the amount that is actually for, say, coaxial cable or fiber within the schools, I think that is a very small portion of what is being called internal connections, or at least that is what I have been told.

Mr. STEARNS. Do you think that the authority under section 254 of the 1996 act didn't allow the FCC to sunset this program? I mean, do you have the authority to sunset this program, in your opinion?

Mr. FURCHTGOTT-ROTH. Mr. Chairman, I think that section 254 is quite clear, that the Commission is to establish discounts for the provision of telecommunications services to schools and libraries. No, sir, I do not believe we have the authority to sunset those discounts.

Mr. STEARNS. So not—

Mr. FURCHTGOTT-ROTH. That is for what I would consider to be the discounts on telecommunications services and advanced services, which clearly would include services; but whether that includes the purchase of very sophisticated computer equipment, that is what I have substantial doubts about.

Mr. STEARNS. Okay. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman.

The Chair is now pleased to recognize the ranking minority member, Mr. Markey, for a round of questions.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Mr. TAUZIN. Mr. Markey, let me extend your time just a second and ask unanimous consent to submit questions from our colleague, Congressman Ed Towns, for the Commissioners to respond to in writing. Without objection, it is so ordered.

The Chair will ask general consent that any members who may wish to submit questions in writing might do so and we will ask the Commission to respond within the next 30 days. Is there any objection? Without objection, it is so ordered.

The Chair now recognizes my friend, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

As Mr. Bliley mentioned earlier last week, the Commission adopted new universal support mechanisms for America's largest local phone companies. The result of the FCC's action is that subsidies will increase. What is happening that prompts an increase?

The subsidies aren't for small, rural companies. They are destined for some of the largest companies in America, in a booming economy, in an industry that was supposedly becoming ever more efficient. Universal service issues are always complex. They are frustrating, but it is a little counterintuitive to hear that universal service reform means a subsidy increase.

It makes me a little fearful of what reform might bring to access-charge reform, or to high-cost rural funding.

Now, Chairman Bliley and Chairman Tauzin have introduced a Truth in Billing Act that requires all taxes and fees to be clearly stated on consumers' bills. I have introduced what I have titled The Rest of the Truth in Billing Act, which would require that not only the fees be listed but also the subsidies.

My question to all of you is, where do you think we are heading generally with universal service, and whether we will ever be able to list subsidy levels or make the subsidy portable to other competi-

tors without accurate information on the economic costs of providing service and the subsidy needed to ensure universal service?

Competition helps in some areas, without question, but will it help us everywhere? Can we get—here is my question: Can we get a State-by-State breakdown of subsidizers and recipient States, for the record, of last week’s decision?

Mr. KENNARD. We can certainly provide that information for you, Mr. Markey, on the interstate side of the ledger. The Federal jurisdiction is responsible for only about 25 percent of the universal service funding obligations, so we have all that data and we could provide that.

[The following was received for the record:]

On October 21, 1999, the Commission adopted a new forward-looking support mechanism to provide high-cost universal service support to non-rural carriers. At that time, the Commission also made it clear that current support levels would remain unchanged for some time under a “hold harmless” provision. Specifically, under this provision, non-rural carriers will not receive less support from the new mechanism than they would have received from the current mechanism.

This new forward-looking mechanism provides support to non-rural carriers in certain high-cost states. The Commission announced in October 1999 that the states in which non-rural carriers are expected to receive forward-looking universal service support included Alabama, Kentucky, Maine, Mississippi, Vermont, West Virginia, and Wyoming.

On November 2, 1999, the Commission’s Common Carrier Bureau released the attached Public Notice and spreadsheet listing the estimated annual support amounts to be provided to both rural and non-rural carriers in each of the 50 states, the District of Columbia, and Puerto Rico. The support amounts shown in the spreadsheet are estimates based on procedures and data available at the time of release. It should be noted that the reform of high-cost universal service support is an ongoing process, and support amounts are subject to review and revision.

# PUBLIC NOTICE



FEDERAL COMMUNICATIONS COMMISSION  
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WASHINGTON, D.C. 20554

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News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> [ftp.fcc.gov](ftp://ftp.fcc.gov)

Released: November 2, 1999

## COMMON CARRIER BUREAU RELEASES STATE-BY-STATE UNIVERSAL SERVICE HIGH-COST SUPPORT AMOUNTS FOR NON-RURAL CARRIERS AND FORWARD-LOOKING COST MODEL RESULTS

CC Docket No. 96-45  
CC Docket No. 97-160

On October 21, 1999, the Commission adopted two orders completing its implementation plans for its revised high-cost support mechanism for non-rural carriers. One order adopted input values for the Commission's model for estimating non-rural carriers' forward-looking cost of providing the supported services.<sup>1</sup> The other described the methodology that would be used to compute non-rural carriers' revised support amounts, beginning January 1, 2000, based on their forward-looking costs and an interim hold-harmless provision.<sup>2</sup> The Bureau now makes available, for the convenience of the public, detailed information about support amounts that will be available to non-rural carriers in each of the states and territories of the country when the new mechanism is implemented on January 1, 2000.

The spreadsheet attached to this Public Notice shows the amount of support that will be available to non-rural carriers in each state.<sup>3</sup> As described in the *Methodology Order*, these support amounts will be distributed to carriers on a wire center basis. Because of the size of the spreadsheet displaying the results at the wire center level, that information is being made available today on the World Wide Web ([http://www.fcc.gov/ccb/universal\\_service](http://www.fcc.gov/ccb/universal_service)).

We also make available on the Commission's Web site ([http://www.fcc.gov/ccb/universal\\_service](http://www.fcc.gov/ccb/universal_service)) the model with the input values adopted in the *Inputs Order* and model results, including spreadsheets for each non-rural study area showing the results by wire center.

For further information regarding this Public Notice, please contact Katie King or Jack Zinman at (202) 418-7400.

<sup>1</sup> *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Tenth Report & Order, CC Docket Nos. 96-45, 97-160, FCC 99-304 (rel. Nov. 2, 1999) (*Inputs Order*).

<sup>2</sup> *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov. 2, 1999) (*Methodology Order*).

<sup>3</sup> For informational purposes, the spreadsheet also shows support amounts that will continue to flow to rural telephone companies in each state. At the request of those companies, reform of their universal service support mechanisms is proceeding on a separate track. The Commission is awaiting a recommendation from the Federal-State Joint Board on Universal Service, based on a report from the Joint Board's Rural Task Force, before adopting revised support mechanisms for rural carriers. See *Methodology Order* at para. 11.

## FEDERAL HIGH-COST SUPPORT

	NON-RURAL	NON-RURAL	NON-RURAL	RURAL	TOTAL
	Current	New	Projected	Current	Projected High
STATE	Support*	Mechanism	Support 1/1/2000**	Support Amount*	Cost Support 1/1/2000**
AK	-	-	-	69,043,176	69,043,176
AL	10,975,056	67,688,526	67,688,526	26,680,416	94,368,942
AR	3,726,060	-	3,726,060	71,114,964	74,841,024
AZ	1,667,100	-	1,667,100	29,981,808	31,648,908
CA	5,771,700	-	5,771,700	44,896,092	50,667,792
CO	1,973,628	-	1,973,628	42,261,204	44,234,832
CT	-	-	-	924,466	924,466
DC	-	-	-	-	-
DE	-	-	-	-	-
FL	-	-	-	18,807,648	18,807,648
GA	1,882,608	-	1,882,608	66,324,732	68,207,340
HI	-	-	-	875,568	875,568
IA	-	-	-	24,730,512	24,730,512
ID	-	-	-	28,591,788	28,591,788
IL	-	-	-	38,589,372	38,589,372
IN	-	-	-	16,013,880	16,013,880
KS	-	-	-	64,624,488	64,624,488
KY	1,090,428	17,981,159	17,981,159	18,232,632	36,213,791
LA	-	-	-	65,282,184	65,282,184
MA	-	-	-	525,108	525,108
MD	-	-	-	535,176	535,176
ME	-	6,269,997	6,269,997	17,843,664	24,113,661
MI	586,272	-	586,272	34,684,356	35,270,628
MN	-	-	-	42,252,048	42,252,048
MO	6,652,188	-	6,652,188	45,126,468	51,778,656
MS	7,000,044	113,564,228	113,564,228	20,076,708	133,640,936
MT	1,687,692	-	1,687,692	42,291,384	43,979,076
NC	7,740,468	-	7,740,468	24,328,284	32,068,752
ND	-	-	-	21,480,324	21,480,324
NE	-	-	-	20,740,416	20,740,416
NH	-	-	-	8,215,500	8,215,500
NJ	-	-	-	1,364,556	1,364,556
NM	4,424,016	-	4,424,016	31,095,192	35,519,208
NV	-	-	-	10,851,000	10,851,000
NY	-	-	-	38,761,932	38,761,932
OH	-	-	-	15,006,696	15,006,696
OK	-	-	-	57,942,924	57,942,924
OR	-	-	-	36,827,232	36,827,232
PA	-	-	-	21,763,152	21,763,152
PR	133,283,784	-	133,283,784	-	133,283,784
RI	-	-	-	-	-
SC	5,191,896	-	5,191,896	37,623,528	42,815,424
SD	-	-	-	18,321,036	18,321,036
TN	-	-	-	29,296,992	29,296,992
TX	5,229,972	-	5,229,972	114,367,128	119,597,100
UT	-	-	-	11,405,544	11,405,544
VA	1,184,748	-	1,184,748	11,209,140	12,393,888
VT	1,362,792	12,016,843	12,016,843	10,484,844	22,501,687
WA	-	-	-	43,123,020	43,123,020
WI	-	-	-	50,744,412	50,744,412
WV	1,453,080	34,538,551	34,538,551	21,685,728	56,224,279
WY	4,404,012	3,292,267	4,404,012	21,034,116	25,438,128
Totals	207,287,544	265,351,571	437,465,448	1,487,982,528	1,925,447,976

\* Fourth Quarter 1999

\*\* Based on 4th Quarter 1999 data

Mr. KENNARD. We are not privy to all the State information. To get to the other aspects of your question, though, universal service and access charge reform are part of a big puzzle that we have been grappling with, as you know, since the 1996 act was passed.

It is somewhat of an evolutionary process. We have been implementing reform of both access changes and universal service in stages. Last week, we took a cut at it for the nonrural companies. It was significant for our competition policies because it put universal service funding for the nonrural companies on a forward-looking cost basis, which is important for competition.

It takes another step toward making universal service more explicit so it can become portable, as you recognize.

I think the next stage of universal service must be to make sure that it is technology neutral. You point out in your remarks that competition in technology is changing this marketplace, and I think that there are providers out there who can provide our universal service needs more efficiently than the wire line carriers. We have got to have a system to make sure that the most efficient providers, be it a wireless carrier or satellite carrier, has access to that subsidy money, because that will be best for consumers.

Mr. MARKEY. Could I continue a couple of seconds, Mr. Chairman?

Mr. TAUZIN. The Chair will grant the gentleman additional time. Without objection, so ordered.

Mr. MARKEY. So just up in my own region, we might subsidize an area of Maine, for example, which used to be part of Massachusetts until the Compromise of 1820 and they broke it off to let Missouri in as a State, the Missouri Compromise, based upon cost models of what it might cost a traditional local phone company like Bell Atlantic to serve that area, yet Bell Atlantic Mobile with cellular service might serve the same area for a fraction of the cost. What is the service that we are subsidizing?

Mr. KENNARD. Well, the Commission defines, pursuant to your directive, what the baseline universal service needs are, and that particular service is subsidized. My own view is that historically there has been somewhat of a bias toward subsidizing the traditional wire line carriers. But as wireless becomes much more useful to consumers, as many consumers start to look to wireless for a substitute for wire line services, you get all the digital bells and whistles on your wireless phone, and wireless can be used more efficiently, particularly in rural areas. I think then we ought to start shifting our focus and make sure that the wireless carriers are part of the subsidy approach.

Mr. MARKEY. I was in Framingham, Massachusetts, in my district yesterday morning, in the poorest part of this community. We have had 5,000 or 6,000 Brazilians move in in the last 10 years, and it qualifies for the full E-rate subsidy, and the community has decided that they would build a brand-new school in this community, incented in part by the E-rate, knowing that much of the service and the equipment could, in fact, be installed to help these children gain access to the skill set they are going to need.

Every corridor, each poster is in Portuguese and in English, and as they teach using these computer technologies, they help to bring these kids along.

As we know, 50 percent of all of the children in the United States are going to be minorities by the year 2030. That is only from 1969 to today, not that long, I think, from most of our perspectives. We don't think of that as a long time ago.

So it is important that we continue, I think, to emphasize how important it is to make sure that every kid gets access to these skills, because clearly we are going to depend upon these younger people to pay for the Social Security and Medicare Trust Fund for all of us when we are in our old age, and they have got to get access to it.

Mr. TAUZIN. What do you mean?

Mr. MARKEY. It is a good program.

And I think it is also important for people to understand, because a lot of people in rural America, I think, get a little bit ticked off about the E-rate program fee when they see it on their bill. And I think it might help them a lot if they could also see on their bill, perhaps my father could see on his bill, that he is subsidizing to the tune of 20 bucks or 200 bucks some rural consumer's ability to really get phone service at all.

And I think as long as everyone understands the slosh that goes on as part of this telecommunications policy, they could easily see that perhaps the rural Americans are the greatest beneficiaries of this universal service program, and that just adding in a little bit here that helps the poorest children get access to a skill set that is indispensable to our Nation's ability to be able to democratize access to information and ultimately to capital in our society is working today.

It is demonstrable, this great happiness I find in most communities, all communities in my district, in terms of kids' ability to get it. I personally want to congratulate the FCC on implementation of the E-rate program.

I know definitively that there is no sunset authority in the legislation and that will just have to be a battle we have here in Congress if anyone wants to wage it, but it necessarily invokes, then, all the subsidies that go to rural America to give them low-cost phones. If we do believe in free market economics, then we might as well go for it all the way. If we are going to stop subsidizing poor children, we might as well subsidizing wealthy farmers as well, because that is exactly what our program in America today makes possible.

I thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman.

The Chair will ask the indulgence of the committee. The Chair will have to leave in just a minute and leave the committee in Mr. Gillmor's hands.

With the indulgence of the committee, I would like to put two questions on the record, without objection.

The first, Mr. Chairman, regards the freeze that has been issued on the issuance of licenses commonly known as MAS, M-A-S, the multiple address systems. It is the licensing of the capacity of utility networks to monitor their utility and railroad networks.

My understanding is that public safety radio services are exempt from auctions, but the Commission has put a freeze on these li-

censes because you are considering whether the agency should auction these licenses in the future.

I have sent you communications on it, but it is a public safety issue that I would appreciate very much if you all would focus on it and respond to the committee, because we are getting some concerns expressed from public utility groups about the safety of their systems without these capacities.

The second thing is something we have all been kind of kicking around here, that I wanted to also put in the record and get your response to.

Chairman Kennard, you announced indeed that the agency has received congressional approval to create the new enforcement and consumer information bureaus. As we are looking at the law, I think it is 5B, it indicates, generally speaking, that from time to time as the Commission may find necessary, the Commission shall organize its staff into integrated bureaus to function on the basis of the Commission's principal workload operation.

There seems to be very clear authority in the law for you to create new bureaus, dismantle old ones, reconfigure your bureaus according to workload, and it goes on to further give you the right, as you deem necessary, to provide legal, engineering, accounting, administrative, et cetera, services to those bureaus.

Why in your plan do you refer to congressional approval in the creation of bureaus? Do you need congressional approval? And if so, when?

Mr. KENNARD. Yes. It is my understanding that we have to get approval from our appropriators whenever we reappropriate funds to establish a new bureau or a large organizational unit, and so we always talk to both the Appropriations Committee and also the Commerce Committee so that everyone is informed. That is what we did in this instance.

Mr. TAUZIN. So you have authorized authority?

Mr. KENNARD. Yes.

Mr. TAUZIN. You are simply concerned that the appropriators have some language in the appropriations bill that makes you go back to them?

Mr. KENNARD. Yes. It is required by statute, section 605 of the Appropriations Act.

Mr. TAUZIN. You are tougher than we are.

The Chair will now put Mr. Gillmor in the chair and yield to the gentleman, Mr. Shimkus, for a round of questions.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Chairman Kennard, I would like to follow up just on that last point. Would the appropriation requirement for the growth of new bureaus necessitate a larger piece of the appropriation pie, or is that just for reorganization within the current budgetary boundaries?

Mr. KENNARD. As I understand, it is the latter. Whenever we reprogram funds to fund a new bureau or a large organizational unit, we have to get approval from our appropriators.

Mr. SHIMKUS. Thank you. I have been around long enough now, you know my consternation with the E-rate and the billing, and really I kind of agree with my colleague from Massachusetts that we ought to have truth in billing and shine the light of day and



let the public understand. That would help our discourse here in the public forum as people understand what the universal service fund is, and breaking it out.

You know, I can go back to my poor rural farmers, based upon commodity prices this year, and debate that.

I think he brings up a good point that I would be receptive in addressing and shining the light of day on the universal service fund to debate what the E-rate is, what the assistance to rural America is.

I would love to hear the Portuguese being spoken with a Massachusetts accent. I am sure he is probably taking language studies now for all of those new Portuguese, or actually Brazilians who speak Portuguese. Excuse me.

Mr. MARKEY. Will the gentleman yield?

Mr. SHIMKUS. I will.

Mr. MARKUS. Every time the gentleman hears Theresa Heinz, who is Portuguese, married to Senator John Kerry, you are hearing a Boston accent with a Portuguese twist to it.

Mr. SHIMKUS. Well, I haven't run in those circles yet but I look forward to it.

Mr. MARKEY. Me neither. Me neither.

Mr. SHIMKUS. Let me just ask, going back to the Telecom Act, and of course we use that to establish your valid position that the E-rate has been established based upon the Telecom Act and section 254. I wanted to use that to segue into broadband, where broadband is not addressed. And I wish the chairman could have stayed because I am trying to get your position on the chairman's broadband bill because I am of the position that what consumers really need, we need multiple pipes with multiple choices. I think that is what the chairman brings to the table with his legislation, and I would ask the chairman to respond first and then if anyone else would like to chime in after that, that will be my question to the dias.

Mr. KENNARD. Certainly. Well, I know there are a number of bills that are pending that address this area, and we as a Commission have not taken a position formally on any of the legislation. We typically serve in our role as the expert agency to provide information and expertise to assist all of the proponents of the bills. As a general matter, it has been the policy of the Commission to try to promote as many incentives as we can for broadband deployment.

I personally believe that we should create a little oasis for broadband, where any company that wants to deploy broadband should be able to do it in an unregulated environment or a significantly deregulated environment, because I believe that the American public need these broadband services. It is important for electronic commerce. It is important for our country to maintain its dominance as the world leader in the Internet.

So I encourage this policy debate about broadband and we will certainly commit to do everything we can to help from our end.

Mr. SHIMKUS. But it is your impression—and obviously this was not addressed in the 1996 act so we really need to talk about it legislatively in the forum, is that correct?

Mr. KENNARD. I think that people make arguments that it is or it isn't covered by the 1996 act. I think it is fair to say that the explosion of broadband wasn't expressly contemplated in the act, but a lot of technologies aren't contemplated in the act and we have to interpret the act in a way that accommodates them. We have done that historically.

Mr. SHIMKUS. Do any of the other Commissioners want to add to this? If not, then, Mr. Chairman, I yield back my time. That is the only question I had.

Mr. GILLMOR [presiding]. The gentleman yields back. The gentleman from New York, Mr. Engel.

Mr. ENGEL. Thank you, Mr. Chairman.

Mr. Kennard, about 2 years ago, I think it was, you and I, and Mr. Powell was there as well, attended a hearing in committee that Jesse Jackson had put forth to talk about minority ownership, I believe it was of radio stations at the time, and the conclusion that was come to at that time was that there had been slippage.

I am wondering if you can enlighten us as to the ensuing 2 years, has there been a stoppage of that slippage or are we still on the same path?

Mr. KENNARD. I think, unfortunately, we still are on the same path. With the consolidation that we are seeing in the radio industry, it is harder for new entrants, small businesses, including minority and women-owned companies, to get a foothold in that marketplace.

So I would encourage you and your colleagues to do everything you can to address that issue. There are some encouraging efforts underway. There is legislation that has been offered in the Senate by Senator John McCain to reinstitute the tax certificate policy. My colleague, Michael Powell, had a lot to do with that.

We have encouraged the large group owners in the radio business to reach out a helping hand to small and minority businesses, and some of them have been receptive to that. But there is a lot more that needs to be done to try to at least get a little bit of a counter current going against this tide.

Mr. ENGEL. The media obviously has tremendous influence in our day-to-day lives, and I believe the impact on this Information Age influence needs to be examined but it doesn't always promote accurate images. I introduced the Ethnic and Minority Bias Clearinghouse Act of 1999 to address this issue. Essentially what this legislation does, it would shed a good deal of sunshine on our media. It does not attempt to place any mandates upon broadcasters, but the legislation instructs the FCC to begin compiling data on complaints, grievances and opinions regarding radio and TV broadcasts in their depiction of ethnic and minority groups.

So I would be interested in hearing the FCC's current capability to compile such relevant data, and I am wondering if any of the Commissioners would like to comment on the legislation.

Mr. KENNARD. I think that you put your finger on a very important issue for our society, and that is the way that minorities and women are portrayed in the mass media. From time to time we hear of incidents of literally racial, in my view, hate crimes perpetrated against minorities over the airwaves. We saw one recently

in the Don and Mike Show involving just an outrageous attack on Hispanic Americans over the airwaves.

We collectively as a society need to be monitoring this and we need to know what is happening on our airwaves. That is not to say that we are going to censor or we are going to intrude on anyone's First Amendment rights, but I believe that what you are doing is right, to try to get a handle on who is doing this and at least shed some light on these practices.

Mr. ENGEL. Well, thank you. I just want to say for the record that I just received a letter from our former colleague Kweisi Mfume, who is now head of the NAACP, putting the full force of the organization behind this legislation, in support of it. I am really hoping that we can move it because I think it is very, very important. And I thank you for your sensitivity on the legislation.

The FCC earlier this year released a study and conducted a forum on the impact of advertising practices on minority-owned and minority-formatted broadcast stations. I am wondering if you could elaborate on this study and what will happen now as a result of this study on this important issue.

Mr. KENNARD. We did issue a study in January which evaluated certain practices in the advertising industry affecting minority-owned stations and stations that serve minority audiences that appeared to be systematically undervaluing minority consumers. These stations were not getting their fair share of advertising dollars. This was sort of a preliminary study in nature.

There is a lot more work to be done but it was my effort to try to shine light on a subject of great importance to minority consumers, and I am pleased to say that many in the advertising industry were listening and some advertising agencies stepped forward and wanted to know more about some of the practices we uncovered, and we will continue to shed light on this every chance we get.

Mr. ENGEL. Obviously I need not tell you, but obviously—because you are obviously doing it, but sometimes just holding the hearings and shedding light helps prompt people to move. It may not be done with legislation, but legislation is always, obviously, a possibility down the line if we don't see enough movement in that direction.

Mr. KENNARD. Thank you.

Mr. ENGEL. If I may, I have just one final question, not on what I have been asking, but I would like to ask Commissioner Tristani. You mentioned before about the public interest standard with regard to the conversion to digital and you mentioned that the FCC should work to define it. I am wondering if you had—if you could share with us an opinion you would have on a definition of it?

Ms. TRISTANI. It has something that certainly we should examine and, at the very least, I think we could talk about, when requiring broadcasters to produce local programming, some kind of local programming oriented to community issues. That certainly would be a good starting point. That is what broadcasting is supposed to be about, serving a local community.

Mr. Engel, if I could add to one of your previous questions. I think the ethnic clearinghouse bill is an excellent idea. The Chairman, Chairman Kennard, alluded to a Don and Mike Show that

ran August 8 in Albuquerque and I think 59 other cities. It was a 12-minute segment that I heard where an Hispanic woman was treated in a manner that no American should be treated. It was the most racist, bigoted offensive and demeaning piece of radio that I have ever heard. And certainly we can't censor that, but we ought to be talking about how much of that is going on in America. It is just not right.

Mr. ENGEL. We thank you and thank you for the comments. And, Commissioner Kennard, thank you as well. I think it is so important to focus on this and shed light, again, not to censure anything, but I think we need to understand what is going on, and, hopefully, people of goodwill can throw some cold water on that kind of thing.

Before I yield back, Mr. Chairman—

Mr. GILLMOR. The gentleman's time has expired. I would ask the gentleman to wrap it up.

Mr. ENGEL. I am wrapping it up. I just wanted to make a comment that Mr. Markey was talking about his district. I just want to remind Mr. Markey that he lost his bet to me on the Yankees and the Boston Red Sox, and Mr. Lewis is going to lose his bet to me on Atlanta and the New York Yankees.

Thank you, Mr. Chairman. I forget what we bet by the way, but you lost.

Mr. GILLMOR. That was worth the extra time.

The gentleman from Mississippi, Mr. Pickering.

Mr. PICKERING. Thank you, Mr. Chairman. I also want to commend you on the work that you have done on FCC reform.

I am sorry that the gentleman from Louisiana left. Just as I felt the pain from Mr. Markey with the loss after a controversial call of the Boston Red Sox, I felt the pain for the gentleman from Louisiana as the LSU football program has struggled this year and recently lost to Mississippi State University after a controversial call. They are beginning to say in Louisiana that LSU is a drinking institution with a football problem.

But to the subject at hand, Mr. Chairman, you talk in your testimony of being faster, flatter, more functional. You talk about radically restructuring the FCC as we move to competition and convergence. And so what I want to focus on in my questioning is how and when you get to the flatter, faster, and to the radical restructuring. You have a 5-year plan. When in your vision or in your view, when does that restructuring occur? Over what period of time? What triggers it?

Mr. KENNARD. It is ongoing, Congressman. We established 5 years because that is the requirement that is imposed on all agencies by the Government Performance and Results Act of 1993 that we come up with a 5-year blueprint. However, we are not waiting 5 years to implement our plan.

We announced today the creation of two new bureaus which are an effort to eliminate duplication of efforts in our enforcement and consumer outreach areas. We are, in addition, continuing to streamline many of our functions within the agency. At the same time, we are trying to deal with all the myriad transactions and petitions and court cases that we have to deal with. So I really see this as an evolutionary process, but I share the sense of urgency

of this committee that things are changing fast and we need to change fast with it.

Mr. PICKERING. Let me ask you your views on a possible benchmark that could trigger restructuring. As I understand it, the New York Public Service Commission has endorsed or recommended the approval of the 271 of Bell Atlantic. I assume that has been or will be submitted to the FCC in the near future. Could you see approval of 271s as a trigger to restructure, whether it is regionally or nationally, in some form? Because that really is the indication of competition and convergence, is it not? And once that has been implemented—I assume you are trying to balance two objectives: certainty and stability and the transition in the full implementation of the act where, as quickly as possible, one set has occurred restructuring to reflect the realities of the marketplace so you can be more appropriately structured and more responsive to the needs of those who are participating in the marketplace. Would an implementation of 271 be an appropriate trigger for further restructuring?

Mr. KENNARD. I think if the Commission were to approve a 271 application, that would be an important benchmark. Certainly, it could indicate that in at least one State we have open markets and that the act is working to incentivize the opening of those markets. I don't know, however, if that would be the trigger that would signify a broad-scale reorganization of the Commission, because we have already committed to doing that and in fact, are rolling that out.

I think that the 271 process is one that is showing some encouraging signs that the competitive vision that you outlined in the act seems to be working in some parts of the country as companies really do the hard work of opening up these markets. But I don't think the grant of one 271 application is going to be symbolic of anything beyond what I have said.

Mr. PICKERING. If you had a 271 for an entire region or for, say, two or three regions, would that then signify sufficient competition and convergence that it would then trigger a restructuring based on a competitive model of regulation versus the old. You talk about the new FCC, is it at that point that we should have the new structure, the new order, the new FCC?

Mr. KENNARD. I think that you have to look at this from the eyes of consumers. I think it would be wonderful if we were able to grant a regionwide 271 application, and that is something that we have been encouraging the industry to do, to look at this not just as a State-by-State process but as a region-wide process. But we have a fundamental obligation to protect consumers, and as long as some consumers are not enjoying the benefits of competition and choice, then we have got to make sure that we are doing everything we can to bring that to them. So I think it is an evolutionary process, and it is hard to say that at any given point we have reached nationwide competition. I think we have got to use our authority carefully to make sure that we are implementing such competition for all consumers.

Mr. PICKERING. Mr. Chairman, is my time up?

Mr. GILLMOR. The gentleman's time has expired, but we are winding down. If the gentleman wants to extend very briefly, he may.

Mr. PICKERING. Thank you, Mr. Chairman.

Just one other question. You also said on page 7 of your testimony, more governance for the marketplace means less government from the FCC. You have your biennial review coming up in 2000. Can you give any examples of current regulations that you would propose or recommend to do away with, clean away the unnecessary, to use the forbearance authority granted to you? Can you give any examples of that?

Mr. KENNARD. Certainly I think we have received 19 forbearance petitions. We have either granted in whole or part 14 of them. We will continue to encourage the industry to file forbearance petitions so we can use our forbearance authority which is significant. I think, to be fair, there are some disagreements among the Commissioners about whether we have been aggressive enough in using our forbearance authority, and we will continue to work through those issues.

Mr. PICKERING. Would any of the other Commissioners like to respond to either of my questions, one on the trigger toward restructuring or the time to restructure and the forbearance?

Mr. POWELL. Congressman Pickering, I would just add, with respect to your 271 question, whether it is a trigger or not, it is certainly a watershed. A significant amount of time-consuming effort at the Commission is dedicated to either issues deeply interrelated with the 271 prohibitions, awaiting 271 relief, and when we reach that day in which those prohibitions have been lifted, there is a fairly substantial volume of questions and issues that will largely be mitigated or transformed. It will certainly be a moment of reflection for something. Whether it will be to execute a plan similar to this strategic vision or not, it certainly should substantially alter the pressures, particularly in the common carrier converged areas that the 271 prohibitions currently generate a lot of issues over.

Mr. PICKERING. Thank you.

Mr. FURCHTGOTT-ROTH. Mr. Pickering, if I may just add on your second question about biennial review. That is coming up in 2000. The Commission has an obligation to review all—and I emphasize all—telecommunications regulations at that time. And I hope that this will be a comprehensive review.

Mr. PICKERING. Thank you, Mr. Chairman.

Mr. GILLMOR. The gentleman's time has expired.

I am about to recognize the distinguished ranking member of the full committee, but I will have to leave, and I will be turning the chair over to Mr. Fossella, but before I do, I just want to follow up with one thing from my opening statement on behalf of both myself and Chairman Tauzin.

I talked about the possibility of putting together a working group of our committee and the FCC—and, regrettably, the Chairman has stepped out temporarily—but is that an agreeable approach for the Commission or should I wait till the Chairman gets back to ask that? I think 4 of 5 is good enough.

Ms. NESS. I would suspect that we would all be in agreement on that.

Mr. GILLMOR. Thank you very much.

The gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I have a number of questions I wish to direct to the Chairman of the Commission. In his absence, I am going to be somewhat incapable of directing the questions to him.

Mr. GILLMOR. I would suggest that we take a very brief break until he returns, because it is my understanding he will be back momentarily, and you can start at that point.

Mr. DINGELL. I have a number of questions I know he wants to answer here.

Mr. SAWYER. If I could, I had just a couple of observations I was going to ask about in a second round. I might fill the time, if you would be willing to undertake that.

Mr. GILLMOR. I think that would be very appropriate.

Mr. SAWYER. Except for the fact that the Chairman is back.

Mr. GILLMOR. Very good. We have just recognized the distinguished ranking member, the gentleman from Michigan.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. Kennard, members of the Commission, welcome to the committee.

Mr. KENNARD. Thank you.

Mr. DINGELL. Last month, the Commission issued its UNE remand order. Of particular note is that the FCC did not require telephone companies to unbundle network facilities used to provide high-speed Internet or broadband services to consumers. Congratulations on that decision. I infer from the decision that you believe that these advanced network facilities do not meet the necessary standards contained in the Communications Act as instructed by the Supreme Court. Is that true? Yes or no?

Mr. KENNARD. Yes.

Mr. DINGELL. It is. Very well. Members of the Commission, do you agree with that statement?

Ms. NESS. Yes.

Mr. DINGELL. We don't have a nod button so you have got to say yes or no. Mr. Powell?

Mr. POWELL. Yes.

Mr. FURCHTGOTT-ROTH. Yes.

Ms. TRISTANI. Yes.

Mr. DINGELL. Mr. Kennard, from a competitive standpoint, is there any relevant difference in the market for high-speed Internet service whether it is provided through telephone line or cable wire or any other mechanism?

Mr. KENNARD. There are differences, yes.

Mr. DINGELL. What are those differences?

Mr. KENNARD. It is a difference in technology. It is a difference in regulatory structure.

Mr. DINGELL. But the guy who picks up the line, does he know any difference?

Mr. KENNARD. Are you talking about broadband?

Mr. DINGELL. I'm calling Chairman Kennard on broadband. Do I know any difference when I use one mechanism or another?

Mr. KENNARD. Most people who are using broadband are not picking up the phone. They are usually accessing a computer for Internet access or data services.

Mr. DINGELL. Whatever mechanism I use, do I know the difference?

Mr. KENNARD. You probably won't. There are some minor differences in the way that broadband is delivered, for example, over coaxial cable as opposed to "digital subscriber line" service or DSL.

Mr. DINGELL. But those are minor differences?

Mr. KENNARD. Yes.

Mr. DINGELL. From a competitive standpoint, are those differences major or minor?

Mr. KENNARD. I would say that they are minor differences in functionality. They are major differences, though, in regulatory structure that applies to the providers of those two services.

Mr. DINGELL. What you are saying is there are major differences to the bureaucrat but minor differences to the user; is that right?

Mr. KENNARD. Not necessarily to the bureaucrat, Mr. Dingell. They are pretty major differences in law in the 1996 act. A provider of—

Mr. DINGELL. What the user sends and receives is pretty much the same, though, isn't it?

Mr. KENNARD. Correct.

Mr. DINGELL. Now, what is the argument—is there a strong argument treating the companies differently when they are providing essentially the same service?

Mr. KENNARD. There is clearly a disparity in the way these two industries are being treated as a regulatory matter. There is no question about that. It is a problem of convergence.

Mr. DINGELL. Cable is not regulated and the rest of them are; is that right?

Mr. KENNARD. Cable is regulated, but it is regulated differently.

Mr. DINGELL. Regulated differently. Now, does regulation of either type company seem wise and what would be the argument for one getting one kind of regulation and the other getting a different kind of regulation?

Mr. KENNARD. Well, I think the goal, to try to put this in context, is we have two industries that are rolling out, as you point out, functionally equivalent services, but they are regulated differently as a function of history.

Mr. DINGELL. Why should they be regulated differently when they are giving functionally equivalent service?

Mr. KENNARD. They shouldn't, but the question is, how do we get them both on an even keel?

Mr. DINGELL. Let's address that in a moment here.

Now, in 1979, on September 17, you said, and I quote, basically we told the Bell companies we want you to get into broadband. We want you to deploy and compete. I envision a broadband oasis where anybody who wants to compete in this broadband marketplace and make the investment to deploy should be able to do so in an unregulated environment or a significantly deregulated environment. Is that a correct quote?

Mr. KENNARD. Yes. In fact, I reiterated it today.

Mr. DINGELL. Those have still been your sentiments?



Mr. KENNARD. Yes.

Mr. DINGELL. Now, this appears to be an area in which you and I can agree. I would note, Mr. Tauzin and I have a bill which would deregulate broadband services from the consumers' home to the central office for both telephone and cable companies alike.

Can I assume then from your statement that you think that we should treat the deliverers of those two different services—of those two services identical in character by a different medium in the same fashion or not?

Mr. KENNARD. There is one very important complicating factor and that is the fact that those copper wires that are transmitting broadband over the telephone lines are also being used to transmit voice telephony, and that makes it quite difficult because the goal of the Telecommunications Act of 1996, as I read it, is to make sure that there is competition not only in broadband but also in voice. And so we have been charged with ensuring that people who want to access those copper lines, those telephone lines for voice get access to them. If the telephone companies are providing broadband DSL over those same lines, it makes for a very complicated and difficult situation to put the two industries on an even keel. Ultimately, I think we should try to.

Mr. DINGELL. Why don't you just allow the marketplace to do that?

Mr. KENNARD. Well, that is one reason why I have advocated deregulation for both of these pipes, but I only think we can achieve that if we can get to a world of multiple broadband pipes. I think that the goal here should not be to try to impose new regulation on anyone but rather to try to develop ways to get out of this regulatory system for everyone. The only way we do that is to create incentives for more deployment not only on cable and DSL but also terrestrial broadcast and wireless telephony.

Mr. DINGELL. Can't you deregulate DSL and cable modem service without upsetting regulation of dial tone service?

Mr. KENNARD. I think it would be difficult because we have—

Mr. DINGELL. Why would it be difficult?

Mr. KENNARD. Because it is difficult to separate the copper wire use for voice and the copper wire use for DSL.

Mr. DINGELL. Let's look at this matter. Sprint, MCI, Worldcom and AT&T control about 75 percent of Internet traffic; isn't that right?

Mr. KENNARD. I can't quote you the exact figure.

Mr. DINGELL. Is that close?

Mr. KENNARD. I really don't know.

Mr. DINGELL. Does anybody know?

Mr. POWELL. It is close on backbone transport.

Mr. DINGELL. Close on backbone.

Mr. FOSSELLA [presiding]. The gentleman's time has expired.

Mr. DINGELL. If I were to say on backbone, would you—

Mr. FOSSELLA. The gentleman's time has expired.

Mr. KENNARD. That would be approximately correct, yes.

Mr. DINGELL. I do need some more time, Mr. Chairman.

Mr. FOSSELLA. You seek unanimous consent for more time?

Mr. DINGELL. I do.

Mr. FOSSELLA. Without objection.

Mr. DINGELL. Thank you, Mr. Chairman.

Now, there is another part of the bill that Mr. Tauzin and I sponsored that allows the Bells to compete in Internet backbone traffic. Last summer, Mr. Chairman, you accused incumbent telephone companies of wanting interlateral relief because they want, and I quote, to throw out section 271 of the Telecom Act. I take it from that statement you believe that the Bells would have little incentive to meet the section 271 checklist if they were granted interlateral data relief before then; is that correct?

Mr. KENNARD. I do believe that, yes.

Mr. DINGELL. Now, do you know how much revenue is derived from just long distance voice traffic in comparison to data?

Mr. KENNARD. I know that today in America the data traffic is increasing at a far greater rate than voice today.

Mr. DINGELL. What is it now?

Mr. KENNARD. Well, it varies carrier to carrier. Some carriers are moving about half of their traffic on their networks in the data area versus voice now.

Mr. DINGELL. Let's take MCI Worldcom and Sprint. Last year, in 1998, these two companies had combined revenues of \$47 billion. Seventy-three percent or nearly \$35 billion of this amount came from voice or long distance. Only 12 percent came from data. Now, Mr. Chairman, with nearly \$35 billion then up for grabs, I remind you that you have not even counted AT&T's voice revenue in this example. Do you still think that AT&T, the Bell companies have no incentive to get their 271 applications approved? There is \$35 billion out there. Is that not a measurable incentive?

Mr. KENNARD. At the same time, you have to look at what is happening in the long distance marketplace. Prices are plummeting as a result of competition, which is a good thing, but it does diminish to some extent the incentives for people to want to enter that business.

But I think the fundamental point here, Mr. Dingell, is that it is important that the 271 job get done. That is, it is important that the vision that you had in the act to open these markets to competition, that that job get completed. And we have to create an environment that ensures that the Bell companies do the hard work of opening up these markets.

Mr. DINGELL. Let's look at this and assume your premise is correct. Once permitted to carry interlateral data traffic, the Bell companies have no incentive to comply with local marketing open requirements of the act. Now, doesn't the Commission have strict enforcement mechanisms at hand to ensure that section 251 of the act is complied with?

Mr. KENNARD. Yes, of course.

Mr. DINGELL. Do the other members of the Commission agree with that?

Mr. POWELL. Yes.

Mr. FURCHTGOTT-ROTH. Mr. Dingell, I would qualify that by saying that much of the implementation of section 251 is done through the State commissions in the section 252 process. They bear the primary responsibility also for enforcement of section 252, and disputes under that go to Federal court.

Mr. FOSSELLA. The gentleman's time has expired.

Mr. DINGELL. Could I just ask one more question, Mr. Chairman? Why doesn't the agency then pursue the means that it has at hand to enforce the compliance with section 251 of the act?

Mr. KENNARD. But we have enforcement actions ongoing to enforce those provisions of the act. I think the——

Mr. DINGELL. What specifically are those?

Mr. KENNARD. Well, we have received complaints about violations of obligations under interconnection agreements. As Commissioner Furchtgott-Roth mentioned, though, and he is exactly right, a lot of this enforcement authority is in the hands of the States.

Mr. DINGELL. You have it, don't you, too?

Mr. KENNARD. We have some enforcement authority.

Mr. DINGELL. You already indicated you have broad authority.

Mr. KENNARD. We do.

Mr. DINGELL. You can't have broad authority and not much authority. You either have broad authority or you don't have authority. Why haven't you used it? You haven't told me what authority you have used or not used.

Mr. KENNARD. Well, we want to use more of our enforcement authority. That is why we are creating an enforcement division—an Enforcement Bureau rather—to consolidate our enforcement efforts. We get a lot of complaints from——

Mr. DINGELL. Mr. Chairman, remember I asked you to enumerate what you were doing in this area. So far you have said you are getting complaints. I understand that you are probably getting complaints, but you have not told me what——

I ask unanimous consent to receive 3 additional minutes, Mr. Chairman.

Mr. FOSSELLA. If there is no objection from the gentleman on my left—I take that as a no. Without objection.

Mr. DINGELL. What enforcement actions have you taken?

Mr. KENNARD. Well, we have taken all manner of enforcement actions.

Mr. DINGELL. Obviously, with this number, you can tell me what they are. What are they?

Mr. KENNARD. We have received complaints under 253 of the act to preempt State and local authority.

Mr. DINGELL. I am asking about 251. That is the market opening requirements. What actions have you taken under 251? 253 is interesting, but I have a limited amount of time.

Mr. KENNARD. I can't enumerate every enforcement proceeding. I would be happy to provide you a list of any enforcement proceedings we have ongoing.

[The following was received for the record:]

This responds to your request concerning the Commission's enforcement activities related to section 251 and the interconnection, local exchange market-opening requirements of the 1996 Telecommunications Act.

As a preliminary matter, I note that Commission staff through the use of the FCC's Accelerated Docket process has assisted in the informal resolution of numerous local competition-related grievances between carriers prior to the initiation of a formal complaint. To date, 16 grievances related to the market-opening requirements of the 1996 Act were informally resolved using this process. The Accelerated Docket focuses on obtaining practical solutions to practical problems by requiring that the parties meet with Commission staff for supervised settlement discussions prior to the filing of a complaint. Staff focuses the parties on the issues truly in dispute and tables those matters of lesser importance. Commission staff then analyzes

the relative strengths and weaknesses of the parties' arguments and communicates this analysis to the parties. It is often after this critical assessment that the parties move toward settlement. While it is somewhat difficult to quantify the number of successes in this area, Commission staff have been instrumental in resolving many of the disputes brought to it through these mediation processes. For example, as the attached press release illustrates, GST Telecommunications recently credited the Accelerated Docket process with resolving a Local Number Portability dispute with U S West Communications.

The Commission staff also encourages settlement of formal complaints. In this regard, during the past year, parties settled the following formal complaints where an incumbent Local Exchange Carrier allegedly had failed to comply with the Sec. 251, interconnection, local market-opening provisions of the Act:

- 1) ACN v. PacBell and North County v. PacBell—ACN and North County alleged that PacBell refused to make available the terms of an interconnection agreement that PacBell had with another carrier.
- 2) American Network v. U S West—American Network alleged that U S West violated sections 201(a), 201(b), and 251 by requiring special construction fees for coin trunk lines.
- 3) US Long Distance v. Southwest Bell Telephone—USLD alleged that SWBT failed to provide resold services equal to that SWBT provided to itself in violation of section 251.
- 4) Airtouch v. GTE—Airtouch contended that GTE failed to provide new facilities in a non-discriminatory fashion as compared with services GTE provided to itself.
- 5) Airtouch v. GTE Southwest—Airtouch asserted that GTE SW violated sections 201, 202, and 251 by not providing certain services and by engaging in wrongful billing practices.
- 6) RCN v. Bell Atlantic (several cases in multiple jurisdictions)—RCN asserted that Bell Atlantic's refusal to provide voice mail service for resale at any price violated sections 251(c)(4)(A) and (B).
- 7) RCN v. NYNEX—RCN alleged that Bell Atlantic's refusal to provide voice mail service for resale at any price violated sections 251(c)(4)(A) and (B).

The following matters relating to an incumbent Local Exchange Carrier's failure to comply with the local market-opening provisions of the Act are pending before the Commission:

- 1) MCI v. Ameritech—MCI alleges that Ameritech has violated the "opt in" provision of section 252(i), which allows CLECs to opt into various provisions contained in previously approved ILEC interconnection agreements.
- 2) MCI v. Bell Atlantic—MCI alleges that Bell Atlantic has violated sections 202(a) and 201(b) of the Act by not allowing MCI to combine access service and local transport, an unbundled network element.
- 3) Enhanced Telemanagement, Inc. v. U S West—ETI alleges that U S West has violated section 251(c)(4) of the Act, which requires ILECs to resell retail services to CLECs, by refusing to provide Centrex services for resale.
- 4) AT&T v. NYNEX—AT&T alleges that NYNEX improperly branded calls from NYNEX's payphones in violation of sections 201, 251, and 271 of the Act.
- 5) ACSI v. BellSouth—ACSI alleges that BellSouth's failure to provide unbundled loops is in violation of section 251 of the Act and their interconnection agreements.
- 6) MCI v. Pacific Bell—MCI alleges that Pacific Bell's "winback" retention calls to customers who requested a change in their local service is in violation of sections 201 and 251 of the Act.
- 7) MCI v. Pacific Bell—MCI alleges that Pacific Bell's requirement that a customer provide a letter of authorization prior to releasing customer network configuration violates sections 201(b) and 251(c)(4) of the Act.
- 8) Paging Network v. BellSouth—Paging Network alleges that BellSouth is unlawfully charging for the delivery of LEC originated local traffic in violation of sections 201(b), 202(a), and 251(b)(5) of the Act.
- 9) AT&T v. Bell Atlantic, MCI v. Bell Atlantic—Plaintiffs allege that Bell Atlantic failed to abide by the Commission's Bell Atlantic/NYNEX merger order in the setting of prices for unbundled network elements.
- 10) MCI v. Bell Atlantic—MCI contends that Bell Atlantic failed to negotiate performance measures for interconnection services in good faith in violation of the Commission's Bell Atlantic/NYNEX merger order.

Finally, I would note that the Commission has not yet exercised its discretionary authority under section 503(b) to issue monetary penalties against an incumbent

Local Exchange Carrier for conduct allegedly in violation of the section 251, local market-opening provisions of the Act.

### News Release

FOR IMMEDIATE RELEASE—NOVEMBER 30, 1999

#### GST TELECOMMUNICATIONS REACHES SETTLEMENT WITH US WEST REGARDING LOCAL NUMBER PORTABILITY COMPLAINT

(VANCOUVER, Wash.) GST Telecommunications, Inc. (Nasdaq: GSTX), a leading Integrated Communications Provider (ICP) in California and the western United States, today announced it has reached a settlement with US West Communications regarding a complaint GST filed against the carrier earlier this year for its failure to implement Local Number Portability (LNP) in accordance with federal rules. Terms of the settlement are confidential.

In June, GST filed a request with the Federal Communications Commission (FCC) to resolve the complaint on an expedited basis utilizing the "Rocket Docket" procedures adopted by the FCC to address cases or complaints which have an immediate bearing on telecommunications competition. By utilizing the Rocket Docket procedures, GST was able to expedite a settlement with US West. As a result, GST will suspend further pursuit of the formal complaint.

"We applaud the efforts of the Accelerated Complaint Resolution Branch of the FCC," stated Brian Thomas, vice president of external affairs of GST. "The FCC established the Rocket Docket procedures to expeditiously solve carrier problems emerging as a result of a more competitive carrier environment. From GST's perspective the process worked the way it was intended, and further enhances the company's ability to compete effectively moving forward."

Local Number Portability allows customers to retain their existing phone numbers when changing to another local telephone service provider. LNP was mandated by Congress as part of the Telecom Act of 1996 in order to level the playing field between the Incumbent Local Exchange Carriers, such as US West, and competitive exchange carriers, such as GST.

GST Telecommunications, Inc., an Integrated Communications Provider (ICP) headquartered in Vancouver, Wash., provides a broad range of integrated telecommunications products and services including enhanced data and Internet services and comprehensive voice services throughout the United States, with a robust presence in California and the West. Facilities-based GST continues to focus on its western regional strategy by anchoring its next generation networks in local markets and connecting them via long haul fiber networks. Visit GST's Web site at [www.gstcorp.com](http://www.gstcorp.com).

For more information, please contact: GST Telecommunications, Lisa Miles (800) 667-4366

Mr. DINGELL. Have you laid in place any fines or penalties against the Bell companies?

Mr. KENNARD. Not that I am aware of.

Mr. DINGELL. That would be evidence that you were engaged in enforcement actions, would it not?

Mr. KENNARD. Yes.

Mr. DINGELL. If you have not initiated that kind of process, I just assume there is no market opening problem. If you have got a market opening problem, broad authorities that you could use on the Bell companies, you have not laid in place any fines or penalties on the Bell companies, I just assume that you have either no violations or that you are uninterested in that matter. Is that an incorrect assumption on my part?

Mr. KENNARD. I think you have to put this in context, Mr. Dingell.

Mr. DINGELL. No, no. You have got this broad authority. You have not used it. You are constraining the Bells in entering other areas, engaging in other competition, but you have not done anything to use your authority under 251. I must, therefore, assume

either you are uninterested in it or that you have—or that you have not had any violations.

I have asked you if you have had violations. You have not told me you were aware of any violations. I am therefore of the conclusion that you are either uninterested in the matter or that you have no violations.

Mr. KENNARD. Your assumptions are incorrect.

Mr. DINGELL. Why are they incorrect?

Mr. KENNARD. They are incorrect because it wasn't until January of this year that the FCC's authority to promulgate specific pricing rules in this area, for example, were upheld by the United States Supreme Court. These rules were in limbo for almost 3 years.

Mr. DINGELL. My \$40 Cassio watch tells me that this is October 26. That is 10 months into the year. So I just assume that if you had diligent interest in this matter, you would, by October 26, 1999, after having been freed in January, have used those 10 months to either find some abuse or to, in fact, lay in place your authority of fines and penalties. You have not done so.

My time is expired. I am left regrettably without time and without any evidence that you have either shown diligence or interest in this matter.

Thank you, Mr. Chairman.

Mr. KENNARD. May I respond?

Mr. FOSSELLA. By all means.

Mr. KENNARD. First of all, Mr. Dingell, I will provide you—I am sorry that I don't have an enumeration of all our ongoing enforcement actions. I will provide them to you in writing so that you will have some confidence that we are enforcing section 251 of the act.

Second, I would like you to know——

Mr. DINGELL. Remember, Mr. Kennard, we are talking about section 251. Not 253 or any of the other sections.

Mr. KENNARD. That is fine. We will give you information on 251.

Second, I want you to know——

Mr. DINGELL. Could that also include fines and penalties?

Mr. KENNARD. Yes, absolutely.

Mr. DINGELL. I assume that is the best evidence of diligence, is it not?

Mr. KENNARD. I would also like you to know——

Mr. FOSSELLA. Perhaps we could bring this outside somewhere.

Mr. KENNARD. I would also like you to know, Mr. Dingell, we are creating an enforcement bureau at the FCC. I have charged that bureau with enforcing section 251 as its top priority, and so we will be bringing to you many, many enforcement actions in the near term.

Mr. FOSSELLA. The gentleman's day has expired.

The Chair recognizes himself for just a few minutes.

For the Chairman or the Honorable Commissioners, it parallels I guess with what many have indicated today. That is, with the emerging competitive market speed, the regulatory process still in some people's mind grinding at precompetition speed, what would be wrong in your opinion with the statutory requirement mandating of the FCC to act on petitions, request for waivers, and applications within 90 days?

And, second, if the Congress requires that a certain FCC action shall be completed within a certain time period, what happens if the FCC fails to act in a prescribed time period? Should there be sanctions, penalties, or consequences resulting from this failure?

I welcome answers from any of the Commissioners.

Mr. KENNARD. I think you touched on an important issue and that is how are we going to get this agency to act faster on more matters. I think that putting a time limit on every agency action would not be a very productive solution because we are so inundated with petitions and requests and transactions, we have to prioritize, and that means that we have to address the issues of the greatest importance, be it enforcement or transactions or whatever first. That means that some things are going to get put at the bottom of the pile. It is the only way to manage any organization.

I think that what we should do is have expected time lines on most categories of proceedings and work diligently to meet them. But I think that if we were to put a statutory time limit on everything the agency does, you would really elevate form over substance, and it would be a disaster.

Mr. FOSSELLA. Do any of the Commissioners have any difference of opinion?

Mr. POWELL. Not really difference of opinion. I actually believe that any honest managerial process needs the ability to shift priorities and resources for which a time constraint can limit. You also have the problem of reconciling different time limits that are adopted for different purposes but nonetheless rely on the same resources.

The one thing that I also think everyone should consider as a caution is time limits can also produce bad decisions. I have observed in government just as often, under the pressure of the gun, silliness manifest itself rather than efficiency; and you can get an eleventh hour decision that must be done by tomorrow that gets done in a way that is counterproductive to the industry, markets and consumers. And so one should think long and carefully about where to appropriately introduce those timelines and where they might nonetheless produce not better decisions but actually a worse one.

Mr. FOSSELLA. Thank you.

Ms. Ness?

Ms. NESS. To the extent there are timelines, they should also reflect the need for the Commission to receive complete and accurate information from applicants or from the licensees. Consequently, if someone wanted to play it out until the end of the game, so to speak, by holding the ball and not providing the information, that should not work against the ability of the Commission to complete its review appropriately and in a timely manner.

Mr. FOSSELLA. Please.

Mr. FURCHTGOFF-ROTH. Mr. Fossella, the Commission has had in the past many statutory deadlines. There are many in the 1996 act. I recall at the time there was skepticism about whether the Commission could meet some very ambitious timelines. I think the Commission did. I am not sure that it resulted in bad decisions.

There is also, and I don't have my handy copy of the act right in front of me, but I believe it is in either section 7 or 8 of the act,

a reference to public meetings and public meetings in part having as an objective to clear out issues that have been around for some period of time. And it may very well be 90 days already in statute. That is a lofty goal, an ambitious goal that the Commission often doesn't meet, but I think that the duty of an agency is to follow the law. And if Congress decides in its wisdom to impose deadlines upon the FCC, that we can and we will meet those deadlines.

Mr. FOSSELLA. Thank you.

Mr. Sawyer has been waiting patiently. I will come back after Mr. Sawyer finishes to follow up on the other question that I had asked. The gentleman is recognized.

Mr. SAWYER. Mr. Chairman, I appreciate your indulgence. I will take less than a minute. I just have three very brief observations.

With regard to the matter that a number of the members of the Commission referred to that Mr. Engel brought up, an inadvertent mispronunciation suggested to me that there really is something that we can do. We may not be in a position to censor that kind of use of the air waves but we are all in a position to censure it, and I hope that we all will.

Second, in the coming days the Commission will receive a letter from me and a number of colleagues asking you to look at the question of the so-called 211 universal hotline for community service. I believe it has enormous merit, not only for its own sake but in relieving inappropriate pressures on 911 hotlines in ways that will benefit communities broadly in accessing services quickly that are most important in people's lives.

And, third, with regard to the E-rate, there's been a great deal that has been said about E-rate, but the notion of building internal connections within schools has one additional application beyond connecting teachers and students with the outside world. It can be the single most important security device that we can put into a school, far more important than any metal detectors or guards that are put into schools. It connects teachers with one another and with the office in a way that all too often is sadly lacking in our schools. It is an expenditure, an investment for which there is virtually no cost if the interconnections are put into the school in the first place for learning purposes. I hope you will encourage that broadly as you counsel with schools with regard to the use of E-rate funds.

I thank you, Mr. Chairman. I yield back whatever time I have.

Mr. FOSSELLA. The gentleman yields back.

As a follow-up, the chairman recognizes himself for just a few more minutes, and then we will call this to an end.

Just to follow up to the responses, if I am not mistaken the Department of Justice imposes certain statutory timelines on its decisionmaking. I have got a sense that perhaps statutory timeline results sometimes in bad decisions, in haste or just for the fact that you are up against this deadline. I am just curious as to whether, Mr. Powell, or the Chairman, if you have any thoughts on the Department of Justice—as to whether there are parallels that can be drawn between the two?

Mr. POWELL. There are parallels. The distinction is an important one because one I would favor and one I would caution. Prophecy-



lactic timelines that have no ability to be extended or have no ability to be benchmarked are a different thing.

What the Department of Justice has, as it has under the Hart-Scott-Rodino Act, a number of mandatory periods in which certain things have to happen for the continuance of the investigation. Those kind of benchmarks I would wholeheartedly support.

Many of the merger proposals coming out of both the Senate and this body, including Congressman Pickering's bill, recognize the notion of, for example, saying that in the first 45 days of a petition for review, the Commission would be required to authorize further investigation. It would be the equivalent of the Department of Justice's Hart-Scott process. That is, it is a quick look and if in that period you don't find things that warrant a deeper investigation, the investigation is over, and the case is closed.

If the bureau believes that issues merit continued consideration, it should have to get the vote of the Commission to do so. But if five responsible individuals were to vote that there are serious public interest issues necessitating a continuation of an investigation, I think that would have merit. What's missing in our process is that kind of guided limitation on a temporal scale which I think we need and I think are the right course for you to consider.

Mr. FOSSELLA. Which leads to the second part of the question I asked before. If certain actions are not completed within a certain time period as prescribed by law, is there any consequence that should result from that given the amount of capital and the speed at which these mergers are taking place and its implications in the capital marketplace and shareholders and ultimately consumers?

Mr. KENNARD. We do have timeframes on some of our decision-making in the tariffing area, for example, and for some formal complaints. We have statutory timelines where you have directed us to act within a certain period of time. And for some types of proceedings, that can be helpful.

I think that what has happened in the last year is the agency has been inundated with these mergers. Most of them are being handled quite quickly. Some of them are very, very complex and difficult, and we are taking more time. And I think in many cases that is appropriate because, unlike the Department of Justice, when we issue a decision in a transaction, we have to write an order, we have to make sure that we have addressed the arguments of all the parties who come before us. We have to make sure that that order is comprehensive and will withstand judicial scrutiny. So that makes our review very, very different from the Department of Justice. And in very complex cases, it takes longer, and that is a fact of life. And, ultimately, I don't think that we should put consumers at risk in the interest of what might be an artificial time limitation.

Mr. FOSSELLA. I guess where my question is—asking unanimous consent for 3 additional minutes. Hearing no objection—

If there is a prescribed time period as we often impose upon the private sector and folks in the private sector don't meet it, there is often a penalty to enforce that time period. I am just curious as to what, if any, penalties should be imposed upon something—an entity like the FCC if they do not comply with prescribed time periods?

Mr. KENNARD. Well, unlike the private sector, our mandate is to protect the public. And so if you are penalizing the FCC, for example, by forcing the transaction through when it hasn't been fully reviewed or there might be public interest ramifications, the only people that get hurt are consumers that we are trying to protect in our review.

I think the answer here is to provide the Commission the resources it needs to make sure that we can deal with these market-restructuring issues and for the Commission to impose its own internal timelines in consultation, of course, with Members of Congress on what is reasonable. And that is a dialog for us to have that I would like to continue.

Mr. FOSSELLA. Ms. Ness?

Ms. NESS. If I could add, I am the one surviving Commissioner who actually lived through all the implementation of the Telecom Act of 1996. We made great effort to comply with each and every deadline, we met every single deadline that was imposed upon us under the act. We continue to meet the deadlines that are imposed upon us. The intentions of the Commission I think are pure in attempting to meet those deadlines.

Mr. FOSSELLA. Thank you.

Last question is, if I heard the Chairman correctly, you spoke to the process in the merger review. Some would suggest the repeal of section 221(a) was an ability—congressional signal to limit the review process or possibly to really leave it up to the Department of Justice or the FCC. Therefore, I would be curious to know the substantive aspects that the FCC performs in a merger review and what does it add or what does it look for specifically that the Department of Justice does not?

Mr. KENNARD. Well, it is a very difficult legal standard. The Department of Justice and Commissioner Powell can speak to this because he was chief of staff over there for a time.

The Department of Justice operates with a different statutory obligation. It has the burden of proof to demonstrate that a merger would lessen competition.

The FCC's mandate is different. The parties come before the FCC. They bear the burden of demonstrating that a transaction serves the public interest. So the burden is different. The legal standard is different.

Because we have ongoing regulatory oversight, we are to make sure that no transaction will undermine our ability to regulate the industry and promote the pro-competitive thrust of the 1996 act. So we look at these transactions differently. That is not to say that there aren't some overlapping issues but fundamentally our thrust is very different from DOJ's.

Mr. FOSSELLA. Are there any other thoughts on that matter? Mr. Powell?

Mr. POWELL. I would just conclude by saying the Chairman is correct that the standards are different and there are different considerations. I am not so sure the Justice Department review is easier because they don't have to comply with the Administrative Procedures Act. They have to bring a lawsuit in Federal court and bear the burden of convincing an impartial judge of the merits of

their case when they are posed, and that is a relatively significant exercise.

The other thing I would say, in all candor, we shouldn't let the standards of the details overstate the significance and substantiality of the duplication. I know what horizontal merger analysis looks like. I know what vertical integrated merger analysis looks like. And I have worked on four or five of these at the Commission. The standards may be different but, in substantial measure, they are antitrust analyses, and they can come out differently because of the standard. They can choose or be directed to different kinds of conditions. But I just won't accept that the overwhelming majority of the analysis is not fundamentally different than the merger horizontal guidelines that are employed in other agencies.

Mr. FOSSELLA. So a lot of the work is duplicative?

Mr. POWELL. Sure. The same sort of analysis. Whether that duplication is a warranted governmental act is a question for you.

Mr. FURCHTGOTT-ROTH. Mr. Fossella, the Commission receives petitions to transfer tens of thousands of licenses every year, tens of thousands of which only a small percentage receive some degree of close scrutiny. We have no consistent set of written rules about how we pull out some for close scrutiny and let the tens of thousands of others go through, some of which involve, frankly, mergers of enormous corporations. Moreover, once we have pulled a few license transfers out which are in every way identical to the tens of thousands which are unchallenged, we have no standards, no written standards, no written rules about how we will review them. It is a process that is made up as we go along.

Very often, the standards that we use look all too familiar to being the market analysis review that is already done at the Department of Justice or at the Federal Trade Commission.

I think it is correct that the Commission has an obligation to find license transfers that are in the public interest, but we do not have a consistent set of rules about how we reach that determination. I can't see any clear way that anyone on the outside applying for a license transfer at the Commission would know how their application is going to be treated, whether it is going to be treated the same as the tens of thousands that go through unscathed or whether they are going to be pulled aside, held up for months.

Mr. KENNARD. If I might respond, frankly, I don't think there is a lot of mystery here. We are charged with a public interest review that requires a public process. We seek comment, and to some extent the extent of our review is informed by the input that we get from the public. That being said, I think Commissioner Furchtgott-Roth has raised some valid concerns about our merger review process which we are attempting to address internally by trying to come up with some consistency of review in the General Counsel's Office, and at least have some overall coordination.

But I think that if you were to consult with people who appear before the FCC and ask them if they have any expectation about when their transactions are going to be approved and how they are going to be handled, I think that there is a fairly high level of certainty about what to expect. Many of these licenses are routine, and they go through quite quickly. It is only the large transactions

that involve novel issues of market structure that draw more public input that we need to address.

Mr. FOSSELLA. Ms. Ness, please.

Ms. NESS. I would also add that it would be informative if you would look at the record of the mergers that we have approved. Why do I say that? Because so often parties on the outside have asked us to take this action or that action in conjunction with a merger. We have not gone in those directions. We have narrowly approached these mergers to ensure that we really were applying the public interest standard to effectuate the goals of the act but not go off in other directions. And so I think if you look at the record you will see that our efforts have been to open markets where further concentration might hinder competition.

And then, finally, we should move faster. There is no question about it. Some of the proposals that you have heard put on the table today are ones that we ought to be working with, and I am sure collectively we will be able to do that.

Mr. FOSSELLA. I would just close and suggest that perhaps the Chairman and the Commissioners look at ways in which to facilitate the process. I would imagine you could create a system whereby you almost sign off on the Department of Justice criteria if you believe that they are satisfactory, which presumably they are, rather than have some of these applicants do the same exact work for just a different entity. After all, you all fall under the same leader, last time I checked.

Ms. NESS. There is one problem with that, and that is our record is fully public. Department of Justice records are not made available to the public, and there are some issues involving privacy.

Mr. FOSSELLA. Perhaps there is a somewhere in between whereby the two could come together.

If there is nothing else, this meeting is adjourned. Thank you very much for your patience.

This subcommittee stands adjourned until 10 a.m. Thursday, when it will meet to conduct an oversight hearing on the 1-year anniversary of the Digital Millennium Copyright Act. Thank you very much for your patience.

[Whereupon, at 12:36 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE CHAIRMAN  
November 5, 1999

The Honorable EDOLPHUS TOWNS  
U.S. House of Representatives  
2232 Rayburn House Office Building  
Washington, D.C. 20515

DEAR CONGRESSMAN TOWNS: This is in response to your letter of October 22, 1999 regarding the Telecommunications Development Fund (TDF).

I share your commitment to TDF and your desire to ensure that the Fund is able to provide assistance to small telecommunications businesses to the maximum extent possible. In this regard, the Commission fully supports the legislative proposal submitted by TDF to amend the Telecommunications Act of 1996 so that TDF may be funded from interest earned on downpayments by auction winners as well as from interest on upfront payments by all auction participants.

Current agency estimates indicate that over the past three years, at least \$73 million in interest could have been generated from these spectrum auction accounts if the TDF amendment were enacted into law. Enactment of this amendment will help ensure that the TDF more fully meets its intended goals to "promote access to cap-

ital for small businesses in order to enhance competition in the telecommunications industry; stimulate new technology development, and promote employment and training; and support universal service and promote delivery of telecommunications services to underserved rural and urban areas.”

In my legal opinion, which was formed while I was General Counsel of the Commission, the proposed TDF amendment is necessary for the following reason. The current statute provides that: “[a]ny deposits the Commission may require *for the qualification of any person to bid in a system of competitive bidding* pursuant to this subsection shall be deposited in an interest bearing account...” with the interest thereafter directed to TDF. 47 U.S.C. 309(j)(8)(C). Pursuant to Commission regulations and auctions rules, the only deposits an applicant must make to become a qualified bidder are upfront payments. Downpayments are not required, or even calculated, until after the auction is completed and winners have been determined. Because the current statutory language is clear on this point, I do not believe that the Commission can adopt any other interpretation without an amendment to the legislation.

I am glad to know that you are working to develop such an amendment. Please let me know if I can be of any further assistance in this highly worthwhile effort.

Sincerely,

WILLIAM E. KENNARD  
Chairman

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RESPONSES FOR THE RECORD OF HON. WILLIAM E. KENNARD, TO QUESTIONS OF HON. BARBARA CUBIN

*Question:* In a January letter I asked the Commission to look into an issue regarding WyoMedia Corporation which filed an application for authority to construct a new television station on Channel 16 in Scottsbluff, Nebraska. Yesterday, my office received a reply from you (Chairman Kennard) telling me that you anticipate that the Commission will open the window very shortly for all “freeze” waiver applicants to amend their applications. Could you tell me specifically when that will happen? You may remember from my letter to you that WyoMedia filed its application in 1996. To me 3 years seems to be a unreasonably long time for an application review.

*Answer:* On November 22, 1999, the Commission’s Mass Media Bureau issued a Public Notice, DA 99-2605, “Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations.” The Public Notice announced a window filing opportunity through March 17, 2000 to allow persons with certain pending requests for new analog (NTSC) television stations to modify their requests, if possible, to eliminate technical conflicts with digital television (DTV) stations and to move from channels 60 through 69.

This window is available for WyoMedia Corporation since its pending application seeks a new full-service NTSC television station on channels 2-59 at a location inside of the so-called “TV Freeze Area.”

*Question:* The recent explosion of mergers in the telecommunications industry have a major impact on competition and economic development not only in my home state of Wyoming but throughout the Nation. Recently, my colleague, Chip Pickering, introduced a measure to establish time limits for FCC review of mergers and acquisitions, and because I have long been concerned about the treatment of mergers in the telecomm industry, I am pleased to be a co-sponsor of the legislation.

I am interested in the fundamental principle of fairness and timeliness in reviewing and approving mergers and avoiding extraordinary delays. I am interested to know, Mr. Chairman, from your perspective, how do you intend to remedy the concern that we all have on Capitol Hill with respect to the time consuming merger review process by the FCC? Is legislation necessary?

*Answer:* I do not believe legislation is necessary to address the FCC’s merger review process. Instead, I have asked the Commission’s General Counsel, Christopher Wright, to organize an intra-agency merger transaction team that will be in place by January 3, 2000. This will streamline and accelerate the transaction review process.

The new intra-agency transaction review team will establish deadlines for rapid processing of transfers of control associated with transactions. The goal will be to complete even the most difficult transactions within 180 days after the parties have filed all of the necessary information and public notice of the petitions have been issued. Finally, the new team will also work to make the transaction review process even more predictable and transparent, so that applicants know what is expected of them, what will happen when, and the current status of their application. This

is also consistent with the Commission's current restructuring focus to transform the FCC into a more functional, faster and flatter organizational entity.

*Question:* As a follow-up to the last question: with respect to my home state, Qwest Communications and US WEST filed joint applications for approval of their planned merger with the FCC and state commissions, including Wyoming, over two months ago. The companies also filed notifications of their transactions with the US Department of Justice and the Federal Trade Commission and received clearance to proceed with the merger in just three weeks.

The timely replies of the DOJ and FTC show that this process can work quickly. When do you anticipate that the FCC will review this pending application? Can you assure me that the FCC will not prolong the process of this particular merger?

*Answer:* Pursuant to the Communications Act, the Commission has an obligation to determine whether a proposed merger is in the public interest. In determining whether a merger is in the public interest, the Commission considers not only the competitive effects of the proposed merger, but also takes into account various factors including the effects of the merger on Congress' goals as stated in the Telecommunications Act of 1996. In other words, the standard used by the Commission differs from those used by the FTC and the Department of Justice. Under the Act, the Commission must determine whether the merger applicants have demonstrated that the proposed transaction, on balance, serves the public interest, considering both its competitive effects and other public interest benefits and harms. If our analysis reveals that the public interest harms of a proposed merger will outweigh its public interests benefits, the Commission may require the merging parties to comply with the conditions designed to ensure that the competitive promise of the merger is met. Further, the Department of Justice and the FTC review process allows a "no action" decision that requires no explanation (and no comment from interested parties.) By contrast, the Administrative Procedure Act and the Communications Act require full due process, including the right of interested parties to receive notice and file comment and the right of dissatisfied parties to seek judicial review.

As you know, on August 19, 1999, Qwest and US WEST filed applications with the Commission requesting Commission approval for the transfer of control of licenses and authorizations held by subsidiaries of the two companies to merge with and into Qwest. The applications were placed on public notice on September 1, 1999; and many parties filed comments. In their reply comments, the applicants outlined a divestiture plan that they claimed would bring them into compliance with section 271. As you know, section 271 prohibits a Bell Operating Company from providing in-region, interLATA services before opening its local markets to competition. Given the importance of section 271 and its pro-competitive goals, on October 19, 1999, the divestiture plan also was placed on public notice. The pleading cycle is now complete.

Accordingly, the Commission will carefully and expeditiously review the application filed by Qwest and US WEST. We hope to have a final decision on this merger during the first quarter of 2000.

*Question:* You have stated for the record that the high speed data market is not an inherently monopolistic market. Would you say that this statement applies in rural areas like Wyoming?

You have also stated that one of your highest priorities is to ensure that rural America has access to the same telecommunications services available to the large urban areas. We share that goal. Is there a legislative or regulatory solution that you see that would immediately address the "digital divide"?

*Answer:* I believe that, even in our most rural areas, we can not yet conclude that there is a natural monopoly in broadband services. Competition in all areas of telecommunications is still emerging and will continue to grow. There is facilities-based competition in the western part of Wyoming in areas served by US WEST and Silver Star Communications and there is resale of residential and business telephone service throughout the state. PCS wireless service has also been launched. In addition, Wyoming has infrastructure important to the development of competitive broadband services. Every community except two is served by digital switching equipment located in each respective central office and cable television is also available to 82 % of the homes in Wyoming. Satellite services are available throughout Wyoming, especially in thinly populated areas (and the cost of satellite-based services, unlike wire-based ones, is insensitive to distance). All these technologies are platforms for broadband.

Of course, I share your concern about rural area access to advanced services. We are just beginning the second of our regular inquiries into the deployment of broadband to all Americans, and are giving particular attention to the question of how soon and whether competition will bring broadband services to rural areas.

Early in the new year, we will issue a Notice of Inquiry on this issue and welcome your and your constituents input.

It should also be noted that we are not required to rely entirely on market forces to bring broadband services to rural areas. Section 706 of the 1996 Act provides that if broadband is not being deployed in a reasonable and timely fashion to all Americans, we and state regulators should use a variety of deregulatory and competition-promoting techniques.

Finally, I assure you of my commitment to ensuring that rural Americans share in the benefits of technological advancements in telecommunications services. To that end, I have asked the universal service Joint Board to speed up its review of the services that are eligible for universal service support, so that they may consider whether broadband services should be included. In addition, at the recommendation of NARUC, the FCC has created a Joint Conference with the states to facilitate the dialogue among state and federal regulators about how to bring advanced services to all Americans.

RESPONSES FOR THE RECORD OF HON. WILLIAM E. KENNARD, TO QUESTIONS OF HON. MICHAEL OXLEY

*Question:* I wrote the Commission last month outlining our concern that the FCC has not acted on Internet LOAs, or letters of agency, to allow consumers to change pre-subscribed telecom carriers over the Internet. Twelve of my colleagues signed onto that letter. I understand the issue is linked to the slamming order, but our point was that Internet LOAs should be non-controversial and should be separated out and acted on promptly. Any chance of that?

*Answer:* I share your interest in resolving the issue of Internet LOAs. As indicated, however, in my response to your recent letter regarding LOAs, we received comments from many interested parties on this issue but there is not unanimous agreement on whether Internet LOAs should be permitted. Several commenting parties expressed concern that submitting a carrier change using the Internet would not, by itself, provide sufficient consumer protection if it were not accompanied by additional verification. For example, most PUCs express concern with the security of Internet transactions and urge the Commission to use any safeguards possible, e.g., getting alternate forms of identification and verifying changes through three prescribed methods. Some suggest that Internet LOAs are fertile ground for slamming. Others suggest downloading LOAs from the Internet and sending hard copies to carriers. One consumer group is against Internet LOAs altogether. By contrast, others strongly support the use of the Internet to facilitate the submission of carrier changes. Because of the importance of this issue, and in light of the strong and varied sentiments in the comments, we intend to move as quickly as possible to evaluate and resolve the issue of Internet LOAs.

*Question:* (for Commissioner Furchtgott-Roth) Congressman Stearns and I have written the Commission twice to voice concern over the FCC's proposed low power radio service. Our biggest concern is over the impact on current interference standards. Can the Commission assure the Committee that if it goes forward with the proposal there will be no weakening of current interference standards and no increase in interference with existing license holders?

*Answer:* I share your concern over the FCC's proposed low power radio service. As I said when I dissented from the adoption of the proposed notice of rulemaking, the Commission can authorize extremely few new stations under existing interference rules. In order to create any real amount of new service, protection standards must be loosened so far as to eliminate third and even second adjacent channel safeguards.

Accordingly, I regret that I do not think it is possible to say that there will be no weakening of current interference standards and no increase in interference with existing license holders. I fear that these license holders, as well as their listeners, will bear the brunt of the effects of this proposal. Moreover, any new low power stations would themselves likely receive interference from full power stations, potentially making the promise of their service illusory. In sum, this proposal is likely to create more harm than good on all sides, that is, for current broadcasters, their listeners, and even new low power stations.

RESPONSES FOR THE RECORD OF HON. WILLIAM E. KENNARD, TO QUESTIONS OF HON. PAUL GILLMOR

*Question:* Private land mobile users have informed the Commission for years that their spectrum needs are not being met. What plans do you have to ensure their access to needed spectrum?

Answer: Private land mobile users' communications requirements can be satisfied in a number of ways. One is through the reallocation of spectrum from other uses. The Commission is currently considering an industry proposal that includes a request for allocation of 6 MHz of the 746-806 MHz spectrum to be licensed to Band Managers. These Band Managers could coordinate spectrum for private use. This spectrum is being recovered from TV channels 60-69 as a result of digital television implementation. Also, in the Spectrum Policy Statement of November 22, 1999, the Commission said that it would consider establishing a new Land Mobile Communications Service in 10 megahertz of spectrum in the 1390-1435 MHz bands. While these bands are not contiguous, they are sufficiently close together to allow manufacturers to design cost-effective equipment. This band was also identified last year by the Land Mobile Communications Council as possibly being appropriate for limited allocation to private land mobile users.

The use of new and more efficient technologies will also increase the amount of spectrum available for private land mobile users. For example, due to the Commission's "refarming" proceeding, the use of narrower channels has been interjected into spectrum designated for private services. Consequently, we are seeing an increasing capability to accommodate many more private licensees and users.

Finally, the use of cellular and PCS systems is another way to meet some private land mobile users' wireless spectrum needs. New procedures and protocols are being developed for and incorporated into commercial systems that will benefit the private land mobile user.

*Question:* In 1997, the Congress designated 24 MHz for public use in the 746-806 MHz band. There is presently a proceeding underway with respect to the auction of 36 MHz of commercial spectrum in the same band. What efforts will you undertake to ensure that both federal and municipal police, fire, and rescue services will be protected from harmful radio interference?

Answer: In developing a band plan for this 36 MHz of spectrum, a primary goal of the Commission is to ensure that activation of services in these bands will not impair public safety operations through harmful interference. The Commission has under consideration several proposed band plans, including proposals to establish "guard bands", *i.e.*, slices of spectrum adjacent to the public safety spectrum, that would be licensed to Band Managers who would be responsible for assigning frequencies and coordinating frequency use to avoid interference. Additionally, the Commission is also considering other proposals to license such guard bands for low power commercial uses.

Whatever band plan is ultimately adopted by the Commission, let me assure you that my fellow Commissioners and I recognize the critically important role that public safety plays, and will protect public safety operations from harmful interference.

I expect a decision on the aforementioned band plans to be adopted within the next few weeks.